

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

PAUL C. BOLIN ) Case No. 1:99-cv-5279-LJO  
Petitioner, ) DEATH PENALTY CASE  
vs. ) ORDER RE: PETITIONER'S REQUEST  
MICHAEL MARTEL, as Acting Warden of San ) FOR EVIDENTIARY HEARING,  
Quentin State Prison,\* ) RECORD EXPANSION AND MERITS  
Respondent. ) REVIEW

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\*Michael Martel is substituted for his predecessor as Acting Warden of San Quentin State Prison

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1      **I.      Introduction**

2      This matter is before the Court on the motion of Petitioner Paul C. Bolin (“Bolin”) for an  
3 evidentiary hearing and expansion of the record with respect to Claims A, B2, C, D, F, G, I, J, K, W,  
4 Y, BB, DD, and EE.<sup>1</sup> Respondent Michael Martel, as Acting Warden of San Quentin State Prison  
5 (the “Warden”), opposes the motion. In addition to briefs submitted regarding the evidentiary  
6 hearing and record expansion request, the Court has before it the previously submitted merits briefs  
7 in support of and opposition to Bolin’s claims. Bolin requests the Court to defer ruling on record  
8 based claims which may be relevant in assessing cumulative prejudice until after further evidentiary  
9 development has been completed.

10     **A.      Overview of the Case**

11     Bolin was convicted of two counts of first degree murder, with the multiple murder special  
12 circumstance, one count of attempted first degree murder, and one count of marijuana cultivation.  
13 The murder and attempted murder convictions resulted from an argument and shooting in the Kern  
14 County mountain community of Walker Basin on September 2, 1989. In the summer months  
15 preceding the homicides, Bolin was living in a small cabin in a remote area of Walker Basin, at  
16 which he began occupying to cultivate marijuana. Vance Huffstuttler (“Huffstuttler”), one of the  
17 deceased victims, also lived on the property with Bolin<sup>2</sup> to assist in the marijuana cultivation  
18 endeavor. Prior to meeting Bolin, Huffstuttler was a local of Walker Basin.

19     In years prior to 1989, the Labor Day weekend in Walker Basin was celebrated with an  
20 annual team penning (rodeo-type) competition. For the Labor Day weekend in 1989, the family of  
21 Steve Mincy (“Mincy”), the other deceased victim, planned to spend the long week-end enjoying the  
22 festivities and relaxing at a campsite on nearby family-owned property in Twin Oaks. Mincy and  
23 friend Jim Wilson (“Wilson”), the surviving victim, drove from Garden Grove to the Mincy family  
24 campsite on Friday night, September 1, 1989. Mincy and Huffstuttler had been friends for a number  
25

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26     <sup>1</sup> Originally, Claim CC also was included in the request. Bolin withdrew Claim CC (Doc.  
27 236).

28     <sup>2</sup> Huffstuttler lived variously in the cabin with Bolin or in a trailer located nearby, or both,  
sometimes with his girlfriend Rebecca Ward.

1 of years, since Mincy often had spent entire summers in the Walker Basin area as a teenager. Mincy  
2 had introduced Wilson to Huffstuttler on a prior trip to Walker Basin. During this (the 1989) trip  
3 to the Walker Basin area, Wilson intended to spend part of his time bicycling through the mountains.

4 On Saturday, September 2, 1989, Wilson rode his bicycle to a bar in Twin Oaks to meet up  
5 with Mincy. At Twin Oaks, Mincy and Wilson also met up with Huffstuttler, Bolin, and Juan Eloy  
6 Ramirez (“Ramirez”), the latter two who were unknown to Wilson. Wilson left the others at the bar  
7 (and team penning) area and returned to the Mincy campsite later that afternoon after a long bicycle  
8 ride. Huffstuttler was there with Mincy and asked to be driven home to the cabin in Walker Basin.  
9 Wilson drove his pickup truck because he was sober and Mincy had consumed a few beers.  
10 Huffstuttler rode in the cab of the pick-up truck and Mincy rode in the truck bed.

11 After a 45 minute, rough, dirt-road trip, the trio arrived at the cabin and were greeted by  
12 Bolin. Ramirez also was present. Huffstuttler beckoned Mincy and Wilson across a creek bed to  
13 show them numerous marijuana plants under cultivation, all in planter containers. Bolin followed  
14 shortly thereafter and confronted Huffstuttler about bringing strangers to the property. Bolin and  
15 Huffstuttler argued and walked toward the cabin, still arguing. Wilson and Mincy heard a gunshot  
16 from the direction of the cabin. Bolin then returned to Wilson and Mincy, stated he had “nothing  
17 against” them, and opened fire. Wilson turned to run as soon as Bolin raised his pistol and was hit  
18 in his shoulder, but kept running up the mountain-side. He heard Mincy pleading for his life and  
19 more gunshots. Wilson kept running as long as he was able and finally rested until morning when  
20 he found his way to a neighboring ranch and the authorities were summoned.

21 At the cabin property, both Huffstuttler and Mincy were found dead. Huffstuttler was found  
22 outside the cabin near Wilson’s pickup truck; Mincy was found lying near the creek bed. The cabin  
23 was in disarray with broken glass, a turned over chair, and hot sauce on the cabin floor. Outside,  
24 marijuana paraphernalia and loose marijuana were scattered about, a knife was near Huffstuttler’s  
25 body, and hot sauce was observed on Huffstuttler’s socks. A revolver also was found in the vicinity  
26 of Huffstuttler’s body and the pickup truck. Neither weapon bore Bolin’s fingerprints.

27 After the shooting, Bolin and Ramirez left the area and drove to Covina to spend the night  
28 at the home of Patricia Islas. The next morning, Bolin left his four-wheel drive van with a friend and

1 then traveled to Chicago where he had family members. He eventually was arrested in a Chicago  
2 suburb after the airing of the *America's Most Wanted* program on January 7, 1990, featuring him as  
3 "the most wanted." He waived extradition and was returned to Kern County for trial.

4 The airing of the *America's Most Wanted* program together with the pretrial publicity about  
5 Bolin's arrest and crime is a major theme in Bolin's Petition and the subject of this memorandum  
6 order. The character of the first homicide (of Huffstuttler), whether murder or manslaughter, also  
7 plays a major role in Bolin's claims. Similarly, the possibility of a second shooter at the crime scene  
8 is raised. Based on the Court's thorough review of the record and Bolin's offers of proof, neither  
9 of these claims can be sustained; while the claims state viable causes of action, no evidence is  
10 offered which would entitle Bolin to relief.

11 On the other hand, constitutional incompetence of his attorneys, Charles Soria and William  
12 Cater, an over-arching theme in the case, is worthy of consideration. This is particularly true with  
13 respect to the manner in which trial counsel conducted the change of venue motion, handled voir  
14 dire, and failed to renew the change of venue motion post-voir dire.

15 **B. Procedural History of the Case**

16 On December 12, 1990, Bolin's jury found him guilty of two counts of first degree murder,  
17 with the multiple murder special circumstance, one count of attempted first degree murder, and one  
18 count of marijuana cultivation. After two continuances, the penalty phase trial commenced on  
19 January 22, 1991, culminating on January 24, 1991 with deliberations and a verdict of death. Bolin's  
20 motion to set aside the death verdict was denied on February 25, 1991 and his death sentence was  
21 imposed. His conviction and sentence were affirmed by the California Supreme court on June 18,  
22 1998. *People v. Bolin*, 18 Cal. 4th 297 (1998). Bolin's petition for rehearing was denied on August  
23 12, 1998, and his petition for certiorari to the United States Supreme Court was denied on March 8,  
24 1999. Bolin commenced this action on March 3, 1999 with a request for appointment of counsel,  
25 in pauperis status, and for a stay of execution. He filed his federal petition for habeas corpus relief  
26 on August 8, 2000. On the same day, with the assistance of federally appointed counsel, he filed his  
27 first state petition for habeas corpus relief with the California Supreme Court. With his August 11,  
28 2000 state petition, Bolin presented Exhibits 1 through 51 to the California Supreme Court. On

1 January 19, 2005, the California Supreme Court summarily denied Bolin's state petition on the  
2 merits, and additionally found several claims procedurally barred for Bolin's failure to raise them  
3 in the first instance on direct appeal. That procedural default was excepted by the California court  
4 to the extent the petition alleged ineffective assistance of appellate counsel.<sup>3</sup> Bolin's amended  
5 federal petition filed on the same day is the operative petition in this action (hereafter the "Petition").  
6 In addition to referencing Exhibits 1 through 51, Bolin presents Exhibits 52 through 94 with the  
7 Petition. At the direction of the Court, Bolin submitted Exhibit 95, a transcription of the September  
8 5, 1989 interview with surviving witness Jim Wilson.

9 The Warden also has lodged his own exhibits. On December 19, 2007, the Warden lodged  
10 his Exhibits 1 through 15 in support of his merits brief opposing the Petition (hereafter the  
11 "Warden's Exhibits"). On June 30, 2010, the Warden lodged certified copies of the trial exhibits.

12 **II. The Standard for Reviewing State Court Conclusions**

13 Because Bolin's original federal petition was filed after the effective date of the Anti-  
14 terrorism and Effective Death Penalty Act ("AEDPA"), this case is governed by the provisions of  
15 that law. *Woodford v. Garceau*, 538 U.S. 202, 207 (2003). The United States Supreme Court  
16 recently addressed and re-articulated the standard of review for a post-AEDPA petition arising from  
17 a California conviction where the California Supreme Court did not provide a reasoned decision for  
18 its merits denial:

19 Under [28 U.S.C.] § 2254(d), a habeas court must determine what arguments or  
20 theories supported or, as here, could have supported, the state court's decision; and  
21 then it must ask whether it is possible fairminded jurists could disagree that those  
arguments or theories are inconsistent with the holding in a prior decision of this  
Court.

22 *Harrington v. Richter*, 131 S. Ct. 770, 786 (2011). The Court emphasized, "It bears repeating that  
23 even a strong case for relief does not mean the state court's contrary conclusion was unreasonable."  
24 *Id.* (Citing *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). "[A] state prisoner must show that the state

25  
26 <sup>3</sup> The order reads in pertinent part: "Except to the extent the petition claims ineffective  
27 assistance of appellate counsel, the following claims are each procedurally barred, separately and  
28 independently, because they could have been, but were not raised on appeal." Citing *In re Harris*,  
5 Cal. 4th 813, 825, fn. 3 (1993) and *In re Dixon*, 41 Cal. 2d 756, 759 (1953) (Recitation of defaulted  
claim omitted.)

1 court's ruling on the claim being presented in federal court was so lacking in justification that there  
2 was an error well understood and comprehended in existing law beyond any possibility for  
3 fairminded disagreement." *Id.* at 786-87.

4       Claim C was summarily denied by the California Supreme Court on state habeas (state claim  
5 B4). Under California law, this signifies the petition would not entitle the petitioner to relief, even  
6 if all the allegations were assumed to be true. *People v. Duvall*, 9 Cal. 4th 464, 474 (1995). Similar  
7 to the phrasing of federal requirements in Rule 2 of the Rules Governing § 2254 Cases, California  
8 habeas petitions "state fully and with particularity the facts on which relief is sought," and in  
9 addition, "include copies of reasonably available documentary evidence supporting the claim,  
10 including pertinent portions of the trial transcripts and affidavits or declarations." *Id.* (citing *In re  
11 Harris*, 5 Cal. 4th 813, 827 (1993)). "If no prima facie case for relief is stated, the court will  
12 summarily deny the petition." *Id.* at 475. Should a state petitioner "plead sufficient grounds for  
13 relief," the California courts then provide an opportunity for him or her "later to prove them." *Id.*  
14 at 474 (Emphasis in original.) If the state court "finds the factual allegations, taken as true, establish  
15 a prima facie case for relief, the court will issue an OSC." *Id.* at 475. The issuance of an order to  
16 show cause directs the respondent State to address only the claims and factual bases for the claims  
17 in the petition. *Id.*

18       In addition, Claim C was addressed by the California Supreme Court on direct appeal, but  
19 only with the trial record before it. Additional facts and evidence were presented to the state court  
20 during state habeas corpus proceedings. The ruling of the California Supreme Court is addressed  
21 in the analysis of the claims, *infra*.

22       In those cases where a petitioner is able to meet the threshold under § 2254(d) for  
23 establishing the state court decision was unreasonable, the issue of prejudice must be decided. For  
24 ineffective assistance of counsel claims, the prejudice analysis is a component of the claim and is  
25 described below. *See Part V., infra*. Where the constitutional claim is not comprised of a specific  
26 prejudice element, prejudice must be established under *Brecht v. Abrahamson*, 507 U.S. 619 (1993).  
27 Specifically, the prejudicial impact of any constitutional error must have had "a substantial and  
28 injurious effect or influence in determining the jury's verdict." *Id.* at 623.

1       **III. The Standard for Reviewing State Court Factual Determinations**

2       Where a petitioner challenges the state court’s findings based entirely on the state record (i.e.,  
3       an intrinsic review), the reviewing court must be particularly deferential and grant relief only if  
4       “convinced that an appellate panel, applying the normal standards of appellate review, could not  
5       reasonably conclude that the finding is supported by the record” and “any appellate court to whom  
6       the defect is pointed would be unreasonable in holding that the state court’s fact-finding process was  
7       adequate.” *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004); *see also Miller-El v. Cockerell*,  
8       537 U.S. 322, 340 (2003) (“[A] decision adjudicated on the merits in a state court and based on a  
9       factual determination will not be overturned on factual grounds unless objectively unreasonable in  
10       light of the evidence presented in the state-court proceedings . . .”) Construing the “statutory  
11       language so as to avoid contradiction or redundancy,” the Ninth Circuit concludes that “unreasonable  
12       determination” in (d)(2) may be based on a contention “that the [state court] finding is unsupported  
13       by sufficient evidence, [citations], that the process employed by the state court is defective  
14       [citations], or that no finding was made by the state court at all, [citations].” *Taylor*, 366 F.3d at 999.

15       Although the Supreme Court in *Richter*, 131 S. Ct. 770, did not have occasion to apply the  
16       “fairminded jurist” to an inquiry under (d)(2), the identity of the legal term of art, “unreasonable”  
17       used in both (d)(2) and (d)(1) convinces the Court to apply that standard to (d)(2) analyses.

18       **IV. The Standard for Granting Further Evidentiary Development**

19       When a petitioner presents one or more colorable claims that have survived all procedural  
20       impediments and that, despite the petitioner’s diligence in state court, were not adequately developed  
21       in state proceedings, further evidentiary development in federal court may be required, including an  
22       evidentiary hearing and record expansion.

23       **A. Evidentiary Hearing**

24       An evidentiary hearing is authorized under Rule 8 of the Rules Governing § 2254 Cases for  
25       the development of a colorable claim when the state court has not reliably found the relevant facts  
26       and the claim, if proved, would entitle the petitioner to relief. *Schrivo v. Landrigan*, 550 U.S. 465,  
27       474 (2007) (“In deciding whether to grant an evidentiary hearing a federal court must consider  
28       whether such a hearing could enable an applicant to prove the petition’s factual allegation, which

1 if true, would entitle the applicant to federal habeas relief.”). “Because the deferential standards  
2 prescribed by § 2254 control whether to grant habeas relief, a federal court must take into account  
3 those standards in deciding whether an evidentiary hearing is appropriate.” *Id.*; *Cullen v. Pinholster*,  
4 131 S. Ct. 1388, 1398 (2011). A federal court is without authority to consider evidence which was  
5 not available to the state court when undertaking analysis under § 2254(d)(1) as to the reasonableness  
6 of the state court decision. The rationale for this holding is, simply, that “review under § 2254(d)(1)  
7 focuses on what a state knew and did.” *Id.* at 1399. Similarly, a federal court also may not grant an  
8 evidentiary hearing without first determining whether a state court’s factual determination was  
9 unreasonable under § 2254(d)(2). *Earp v. Ornoski*, 431 F.3d 1158-1166-76 (9th Cir. 2005). This  
10 determination may be informed by the six factors identified in *Townsend v. Sain*, 372 U.S. 293  
11 (1963). *See Earp*, 431 F.3d at 1167. Those factors are:

- 12 1. The merits of the factual dispute were not resolved in the state hearing;
- 13 2. The state factual determination is not fairly supported by the record as a  
14 whole;
- 15 3. The fact finding procedure employed by the state court was not adequate to  
16 afford a full and fair hearing;
- 17 4. There is a substantial allegation of newly discovered evidence;
- 18 5. The material facts were not adequately developed at the state court hearing;<sup>4</sup>
- 19 6. For any reason it appears that the state trier of fact did not afford the habeas  
20 applicant a full and fair hearing.

21 *Townsend*, 372 U.S. at 313.

22 Entitlement to an evidentiary hearing is limited further under 28 U.S.C. § 2254(e)(2). A  
23 federal court may not hold a hearing unless it first determines that the petitioner exercised diligence  
24 in trying to develop the factual basis of the claim in state court. *Williams (Michael) v. Taylor*, 529  
25 U.S. 420, 435 (2000) (holding that subsection (e)(2) precludes an evidentiary hearing when the  
26  
27

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28 <sup>4</sup> This factor is informed by the diligence requirement under § 2254(e)(2), discussed in the  
text, *infra*.

1 failure to develop the factual basis of a claim is due to a “lack of diligence or some greater fault  
2 attributable to the prisoner or the prisoner’s counsel”).

3 The question is not whether the facts could have been discovered but instead whether  
4 the prisoner was diligent in his efforts. The purpose of the fault component of  
5 “failed” is to ensure the prisoner undertakes his own diligent search for evidence.  
6 Diligence for purposes of the opening clause depends upon whether the prisoner  
7 made a reasonable attempt, in light of the information available at the time, to  
investigate and pursue claims in state court; it does not depend, as the  
Commonwealth would have it, upon whether those efforts could have been  
successful.

8 *Id.*

9 **B. Record Expansion**

10 The record expansion procedure under Rule 7 of the Rules Governing § 2254 Cases  
11 facilitates the consideration of evidence developed through investigation and discovery. Under Rule  
12 7(a), a court may require authentication of the materials presented. Record expansion follows and  
13 works in tandem with §§ 2246 and 2247 to allow admissibility of proceedings and records conducted  
14 or filed in state court, or developed on federal habeas corpus.

15 If the petitioner seeks to expand the record to introduce new evidence never presented in state  
16 court for the purpose of establishing the factual predicate of a claim, he or she must satisfy §  
17 2254(e)(2) and show that he or she exercised diligence in state court to develop the evidence now  
18 proffered in federal proceedings. *Holland v. Jackson*, 542 U.S. 649, 653 (2004) (per curiam)  
19 (holding that § 2254(e)(2) restrictions apply to evidence presented without an evidentiary hearing).  
20 The deference due state court decisions under § 2254(d) also will be applied in the context of Bolin’s  
21 record expansion requests. *See Pinholster*, 131 S. Ct. at 1398; *Landigan*, 550 U.S. at 574.

22 **V. Essential Elements of Ineffective Assistance of Counsel**

23 To establish that trial counsel was constitutionally defective, the petitioner must demonstrate  
24 (1) that counsel made errors so serious, counsel was not functioning as the counsel guaranteed the  
25 defendant by the Sixth Amendment, and (2) that the deficient performance prejudiced the defense.  
26 *Bonin v. Calderon*, 59 F.3d 815, 833 (9th Cir. 1995) *citing Strickland v. Washington*, 466 U.S. 668,  
27 687 (1984). The reviewing court need not address both prongs if the petitioner cannot satisfy one  
28 or the other. *Hein v. Sullivan*, 601 F.3d 897, 918 (9th Cir. 2010) (“The court may dispose of an IAC

1 claim where the petitioner “fails to satisfy either prong of the two-part test.”); *Strickland*, 466 U.S.  
2 at 697.

3 “The first prong – constitutional deficiency – necessarily is linked to the practice and  
4 expectations of the legal community.” *Padilla v. Kentucky*, 130 S. Ct. 1473, 1482 (2010). Although  
5 the Court has long recognized that American Bar Association (“ABA”) standards are guides to  
6 determining what is reasonable, they are only guides. *Id.* They are not “inexorable commands.”  
7 *Bobby v. Van Hook*, 558 U.S. \_\_\_, \_\_\_, 130 S. Ct. 13, 17 (2009), quoted by *Padilla*, 130 S. Ct. at  
8 1482.

9 To establish deficient performance, a person challenging a conviction must show that  
10 counsel’s representation fell below an objective standard of reasonableness. [ ] A  
11 court considering a claim of ineffective assistance must apply a strong presumption  
12 that counsel’s representation was within the wide range of reasonable professional  
assistance. [ ] The challenger’s burden is to show that counsel made errors so serious  
that counsel was not functioning as the counsel guaranteed the defendant by the Sixth  
Amendment.

13 *Richter*, 131 S. Ct. at 787; *Premo v. Moore*, 131 S. Ct. 733, 739 (2011) (citations to *Strickland*  
14 omitted).

15 Many cases involving alleged deficient performance of trial counsel arise from decisions  
16 counsel make in the course of their representation. Generally, strategic choices are accorded  
17 deference. See *Strickland*, 466 U.S. at 691; *Yarborough v. Gentry*, 540 U.S. 1, 5-6 (2003) *Jones v.*  
18 *Wood*, 114 F.3d 1002, 1010 (9<sup>th</sup> Cir. 1997); *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994).  
19 In order to pass constitutional muster, however, the decisions must be reasonable and informed.  
20 *Sanders*, 21 F.3d at 1456. In the absence of evidence to establish lack of investigation, an improper  
21 strategy (as in *Sanders* where counsel advised his client to lie on the stand), or explained omission,  
22 the deference accorded trial attorneys’ conduct at the time of trial forecloses a finding of deficient  
23 performance.

24 Surmounting *Strickland*’s high bar is never an easy task. [ ] An ineffective-assistance  
25 claim can function as a way to escape rules of waiver and forfeiture and raise issues  
not presented at trial [or pretrial proceedings], and so the *Strickland* standard must  
26 be applied with scrupulous care, lest intrusive post-trial inquiry threaten the integrity  
of the very adversary process the right to counsel is meant to serve. [ ] Even under  
27 *de novo* review, the standard for judging counsel’s representation is a most  
28 deferential one. . . . The question is whether an attorney’s representation amounted  
to incompetence under prevailing professional norms, not whether it deviated from  
best practices or most common custom.

1 *Richter*, 131 S. Ct. at 788; *Moore*, 131 S. Ct. at 739-40 (citations to *Padilla* and *Strickland* omitted.

2 Bracketed clause added in *Moore* decision).

3 “With respect to prejudice, a challenger must demonstrate a reasonable probability that, but  
4 for counsel’s unprofessional errors, the result of the proceeding would have been different. A  
5 reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Richter*,  
6 131 S. Ct. at 787.

7 In assessing prejudice, under *Strickland*, the question is not whether a court can be  
8 certain counsel’s performance had no effect on the outcome or whether it is possible  
9 a reasonable doubt might have been established if counsel acted differently. *See Wong v. Belmontes*, 558 U.S. \_\_\_, \_\_\_, 130 S. Ct. 383, 390 [ ] (2009); *Strickland*,  
10 466 U.S. at 693 [ ]. Instead, *Strickland* asks whether it is ‘reasonably likely’ the  
11 result would have been different. *Id.* at 696 [ ]. This does not require a showing that  
12 counsel’s actions ‘more likely than not altered the outcome,’ but the difference  
13 between *Strickland*’s prejudice standard and a more-probable-than-not standard is  
14 slight and matters ‘only in the rarest case.’ *Id.* at 693 [ ]. The likelihood of a  
15 different result must be substantial, not just conceivable.” *Id.* at 693. 130 S. Ct. at  
16 792 (citing *Strickland*, 466 U.S. at 693).

17 *Richter*, 131 S. Ct. at 791-92.

18 In post-AEDPA cases, the analysis under *Strickland* additionally is subject to the  
19 “unreasonable application” standard of 28 U.S.C. § 2254(d)(1). *Knowles v. Mirzayance*, 562 U.S.  
20 111,123 (2009). The high Court refers to the review standard under § 2254(d)(1) as “doubly  
21 deferential.” *Id.* Under AEDPA, “[t]he pivotal question is whether the state court’s application of  
22 the *Strickland* standard was unreasonable. This is different from asking whether defense counsel  
23 performance fell below *Strickland*’s standard.” *Richter*, 131 S. Ct. at 785. Although the state  
24 decision under review need not explain the state court’s reasoning, the habeas petitioner still bears  
25 the burden to show there was no reasonable basis for the state court to deny relief. *Id.* at 784. “A  
26 state court’s determination that a claim lacks merit precludes federal habeas relief so long as  
27 ‘fairminded jurists could disagree’ on the correctness of the state court’s decision. *Id.* at 786  
28 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). “When § 2254(d) applies, the  
question is not whether counsel’s actions were reasonable. The question is whether there is any  
reasonable argument that counsel satisfied *Strickland*’s deferential standard.” *Id.* Moreover, because  
“the *Strickland* standard is a general standard, a state court has even more latitude to reasonably

1 determine that a defendant has not satisfied that standard." *Stanley v. Cullen*, 633 F.3d 852, 682 (9th  
2 Cir. 2011) (quoting *Yarborough*, 541 U.S. at 664)).

3 **VI. Claim C: Trial Error and Ineffective Assistance of Counsel in Connection with Bolin's  
4 Failed Change of Venue Motion.**

5 Claim C is presented as a two-part argument of trial error and constitutionally ineffective  
6 counsel, the components of which Bolin claims are inextricable. The underlying complaint is that  
7 the venue change motion presented by Messrs. Soria and Cater before voir dire was not granted. The  
8 trial error relates to the fact that Judge Davis did not immediately grant the requested change of  
9 venue, and instead reserved the ruling upon renewal, pending the results of voir dire. The ineffective  
10 counsel claim is predicated on the failure of the attorneys to renew the motion.

11 **A. Statement of the Relevant Facts**

12 The facts relevant to Claim C are numerous. They consist of pretrial publicity, violent and  
13 criminal conduct mentioned in the publicity, the presence of publicity during and after Bolin's arrest  
14 and through trial, a summary of the Kern County Community Attitude Survey, the hearing on the  
15 change of venue motion, and a summary of the voir dire.

16 **1. Pretrial Publicity**

17 There are four categories of publicity in this case: local newspaper accounts of the crime,  
18 local broadcast media publicizing details about the crime, including trailers for the *America's Most  
19 Wanted* episode about Bolin's case, the *America's Most Wanted* program itself, and a follow-up  
20 *America's Most Wanted* segment about Bolin recapping the original program plus proclaiming the  
21 fact of Bolin's arrest within an hour of the airing of the original program. There also were several  
22 references to continued media interest following Bolin's arrest and trial. No reproductions of these  
23 newspaper articles or media broadcasts have been presented to the Court (or, evidently preserved in  
24 the record). All references to the continued interest are anecdotal from the actual record of the  
25 proceedings. The pretrial newspaper articles and audio-video presentations have been submitted as  
26 exhibits: Exhibit 53 for the newspaper articles and Exhibit 54 for the DVD containing the three  
27 audio-video presentations. These exhibits are included as offers of proof in Bolin's evidentiary  
28 hearing motion.

## **a. Newspaper Articles**

Eleven news articles dated between September 4, 1989, and March 3, 1990, have been submitted. In addition to reporting the “grisly” facts of the crime scene as described by deputies, the first five articles, from September 4 through 9, 1989, relay the following information: Jim Wilson’s harrowing overnight trek through the rugged Kern County mountains to a place of safety after being shot in the shoulder, multiple “booby traps” at the cabin site, the discovery four pipe bombs in the cabin and the concomitant need for explosives experts to disarm them, the reason Bolin shot the three young men was that he was furious Huffstuttler brought Wilson and Mincy to see the marijuana operation, Bolin was a convicted killer as well as a former member of the Navy SEALS commando and explosives unit, patrols in the Walker Basin area had been increased as a protective measure, and the SWAT team discovery of a second “marijuana plantation” nearby Bolin’s Walker Basin location. Readers were cautioned that Bolin and another suspect (Ramirez) “may be in possession of pipe bombs and numerous other unknown type weapons.” Regarding the reported prior homicide, namely manslaughter, Bolin was said to have shot the victim during an altercation involving Bolin’s god-daughter, for which he served almost two years in prison and that this information came from the State Department of Corrections. The four pipe bombs said to have been discovered by authorities were described as having the fire power equivalent to a hand grenade. An explosives expert did state that the pipe bombs were not set up as booby traps “per se,” but had potential to do so, and that it was not uncommon for marijuana farmers to set up such booby traps to protect their unattended fields. A description of the marijuana plantation discovered in the secluded terrain nearby Bolin’s marijuana crop was interspersed with information about Kern County’s pursuit of Bolin, a separate discovery of a vehicle registered to Bolin’s wife in another area, and the recovery of a automobile stolen from Los Angeles near the second marijuana operation, intimating a possible connection.

There was a break in the articles submitted between September 9, 1989 and January 6, 1990, when the newspaper article advertised the showing of *America's Most Wanted* featuring Bolin's crime the following evening, and specifically to describe Jim Wilson's "brush with death." The involvement of *America's Most Wanted* was reported to have been solicited by Kern County authorities, who after four months of trying to locate Bolin turned to the producers of the show for

1 assistance. A reporter for the *America's Most Wanted* program was quoted as saying that selection  
2 of subjects for the show "are the biggest threats to society." One of the investigating deputy  
3 corrected earlier accounts that Bolin was a former member of the Navy SEALS, noting that Bolin  
4 portrayed himself as involved with the SEALS to impress others. The article reasserted the  
5 information about Bolin's prior conviction for manslaughter, and, in addition that Bolin suffered  
6 prior arrests for weapons charges. Similarly, the article repeated the description of four pipe bombs,  
7 "each with the explosive power of a hand grenade" officials believed were to be used a "booby  
8 traps." The next article, on January 8, 1990, recounted that because of the airing of the *America's*  
9 *Most Wanted* episode about Bolin, he was apprehended, and repeated the description of Wilson's  
10 14-hour, eight-mile trek during which he crawled to safety. The next article, from January 17, 1990,  
11 provided factual information about Bolin's representation, the fact that he was captured in Illinois,  
12 Wilson's 14-hour, eight-mile trek during which he crawled to safety, that authorities turned to the  
13 syndicated crime re-enactment show for help in finding Bolin, and that authorities discovered four  
14 pipe bombs, each with an explosive power of a hand grenade, to be used as booby traps at the  
15 marijuana farm site. In between there was a letter to the editor from one of the *America's Most*  
16 *Wanted* actors praising the work of the Kern County authorities and the efficacy of the program in  
17 securing Bolin's arrest. The last January article, from January 27, 1990, reported the delay of Bolin's  
18 preliminary examination hearing (to March 2, 1990) and that Wilson crawled eight miles over 14  
19 hours to safety after having been shot in the shoulder.

20 The final article submitted was from March 3, 1990. This article factually summarized the  
21 preliminary examination testimony from Jim Wilson and Eloy Ramirez.

22 **b. *America's Most Wanted* Segment About Bolin**

23 The *America's Most Wanted* program about Bolin aired on Sunday night, January 7, 1990.  
24 It is a dramatization of the crime, and events leading up to it, from the perspective of surviving  
25 victim Jim Wilson, with additional details added from Ramirez's perspective and based on law  
26 enforcement information. The producers hired actors to portray Bolin, Ramirez, Mincy, Huffstuttler,  
27 Wilson, and members of Mincy's family, in particular, Mincy's father and Mincy's young daughter.  
28 The real Wilson provides narration over the action of the dramatization to give context and to

1 describe his fear, sorrow, and disbelief that Bolin killed Mincy and Huffstuttler and tried to kill him  
2 (Wilson).

3 The program begins with the narrator attributing the following information to Drug  
4 Enforcement Agents: "marijuana growers will stop at nothing to protect their illegal marijuana crops.  
5 Booby traps, land mines, bungee sticks, it could be deadly for anyone who wanders too close."  
6 Following this introduction "what happened to a young man from California," is uncovered.

7 The real Wilson first describes how he came to be in the Kern County mountains on  
8 September 2, 1989, that is to enjoy the company of Mincy and Mincy family members at their annual  
9 Labor Day camping trip and to spend time riding his mountain bike through the mountainside trails.  
10 The first indication that the joy of weekend might be compromised occurs when Wilson meets Bolin  
11 for the first time at Twin Oaks, the site of the local bar and annual team penning competition. The  
12 Bolin character tells the Wilson character that he (Bolin) was a Navy SEAL and killed his first man  
13 when Wilson was in diapers. The Wilson character is visibly upset by this comment. After some  
14 reassurances from the others, the Wilson character rides off on his bike and later meets back at the  
15 campsite where the family is gathered. Huffstuttler is there as well, and asks Wilson to drive him  
16 "home," that is, back to the cabin at which he lived with Bolin. Wilson agrees to drive Huffstuttler  
17 home and Mincy goes along.

18 The *America's Most Wanted* narrator explains that Huffstuttler and Mincy previously shared  
19 a drug problem and Mincy's father did not believe Huffstuttler had changed his ways, whereas his  
20 son, Mincy, had done so. The Mincy father character remains aloof from and clearly shows his  
21 disapproval of Huffstuttler. Before departing, a child portraying Mincy's ten-year old daughter  
22 approaches the Mincy character to ask if she could accompany him on the journey. Saying no, he  
23 kisses her reminding her about the dance in town that night.

24 The narrator refers to the trip from the Mincy campsite to the cabin as "an hour's drive up  
25 steep mountain trails." Aerial footage is shown of the rugged mountain terrain. The length of the  
26 journey and the aerial views show that the cabin was difficult to locate and access. Once at the  
27 cabin, the greeting of the Wilson, Huffstuttler, and Mincy characters by the Bolin and Ramirez  
28 characters seems amicable enough, with the exception of Bolin's German Shepherd dog which he

1 (the Bolin character) told the Wilson character was mean and might bite. The dog was tied to a stake  
2 near the entrance to the cabin. Huffstuttler immediately leads his friends down a hill behind the  
3 cabin to the site of the marijuana plants. This is where the trouble begins, with the Bolin character  
4 then confronting the Huffstuttler character about bringing his friends to see the marijuana operation.  
5 The narrator refers to the cultivation as “a secret” law enforcement officials said “Paul Bolin was  
6 determined to keep.”

7       Once the Bolin character confronts the Huffstuttler character expressing his displeasure, the  
8 two proceed away from the marijuana plants back toward the cabin, with Bolin silently perturbed  
9 and Huffstuttler continuing his plaintive monologue about why he should be able to show his friends  
10 the operation. At this point the perspective shifts to Rameriz’s, as Wilson and Mincy remains down  
11 by the creek bed. The Huffstuttler character is depicted grabbing the Bolin character by the shoulder  
12 and turning him around, causing the German Shepherd dog to bark menacingly. The Bolin character  
13 responds to this action by warning: “Don’t fight me Vance. You’re going to lose.” The Bolin  
14 character then walks into the cabin as the Huffstuttler character continues challenging Bolin to fight  
15 and shoot him. After a long pause, the Bolin character emerges from the cabin glaring at  
16 Huffstuttler and holding a pistol. The camera is focused on the pistol, as the safety is pulled back.  
17 The Huffstuttler character pleads with Bolin not shoot and the Bolin character does so, without  
18 saying a word.

19       The camera pans back to the Wilson and Mincy characters who hear the gun shot and appear  
20 very worried. A fast drum beat is heard as the Bolin character returns to the creek bed, pistol in  
21 hand. The Mincy character asks Bolin if he is bluffing to which the Bolin responds simply, “No.”  
22 As the Bolin character tells the others he has nothing against them he raises his pistol. The Mincy  
23 and Wilson characters run in opposite directions, Wilson up the hillside and Mincy down the creek  
24 bed past the marijuana plants. The Wilson character is hit in the shoulder and falls down. The  
25 Bolin character then pursues Mincy who trips and falls down on some large stones. His head  
26 emerges and he pleads with Bolin not to shoot him. The camera pans back to show the Bolin  
27 character standing on a boulder adjacent to the cowering Mincy character, pointing the pistol in  
28 Mincy’s direction. The Bolin character smirks while Mincy pleads and then fires the pistol.

1 There are a number of scenes where the Wilson character stumbles, falls, and tumbles as he  
2 continues to run for his life. The real Wilson's voice speaks over this action explaining he felt like  
3 an animal. At one point there is footage of the Bolin character from the waist down running after  
4 Wilson. The camera pans back and forth between Bolin's actions at the cabin site and Wilson's  
5 frantic escape to safety.

6 Back at the cabin site, the Bolin character is seen taking a rifle and shooting the lifeless  
7 bodies of Mincy and Huffstuttler, turning over furniture in the cabin, pouring hot sauce in the cabin  
8 interior, breaking the bottle, spreading handfuls of harvested marijuana over Huffstuttler's body,  
9 wiping finger prints off the pistol and wrapping Huffstuttler's hand around it, tossing a buck knife  
10 near Huffstuttler's body, loading the dog and Ramirez into the van, and driving away. The narrator  
11 explains that Bolin tried to make the crime scene look like a drug deal shoot out. While the Bolin  
12 and Ramirez characters are getting in the van, the real Wilson speaks over stating his impression  
13 about Bolin: "It was like it was business. It didn't matter that he was going to kill somebody, take  
14 human lives. It didn't matter." The last image of the crime scene footage is of the Wilson character  
15 still running, tripping, and falling through the brush on mountainside.

16 The camera then returns to the *American's Most Wanted* newsroom. The narrator reports that  
17 authorities found four pipe bombs in the cabin, notes that Bolin was a survivalist, but his claims of  
18 being a Navy SEAL were false. Then the narrator reports about Bolin's past violent history,  
19 including that he killed a man in 1981 with a shot gun blast during an argument, and that in 1986 he  
20 stabbed a man 15 times but was acquitted of charges. During narration of these facts, mug shot  
21 photographs of Bolin are displayed including one with Bolin's California State Prison "C-number"  
22 on a plaque below his face. Viewers are urged to call the number on the screen, which is 1-800-  
23 CRIME-90, if Bolin is sighted.

24 **c. Television News Reviewing the Crime and Bolin's Apprehension**

25 This news story, which aired on Monday January 8, 1990, credits the *America's Most Wanted*  
26 program with precipitating Bolin's capture, a feat Kern County Sheriff deputies had not been able  
27 to accomplish in four months. The segment includes excerpts from the program, notably the  
28 shooting of Huffstuttler, and Wilson fleeing – running, stumbling, and falling. Also included are

1 excerpts from an interview with the Kern County Sheriff Smith in which he details Bolin's arrest  
2 following a call from a relative who had seen the *Most Wanted* program and the fact the residents  
3 of the Walker Basin area remained concerned Bolin was still in the area because he was a survivalist.  
4 The story ends with the statement, "with Paul Bolin in jail tonight, people here [in Kern County]  
5 seem to be breathing a lot easier."

6 **d. Follow-up *America's Most Wanted* Segment About the Crime and  
7 Bolin's Apprehension**

8 The follow-up segment aired on Sunday night, January 14, 1990, excerpting previously seen  
9 footage of the Bolin episode and adding some additional interviews. The introduction to the  
10 program line up summarizes two main stories about random, violent murderers, and three follow-up  
11 reports about how three fugitives featured the previous Sunday had been captured. Bolin's is among  
12 the follow-up stories.

13 When Bolin's name is mentioned, the footage is shown of the Bolin character, silently  
14 emerging from the cabin, just before shooting the Huffstuttler character and then the real Bolin  
15 walking through an airport terminal flanked by law enforcement and in belly chains with the word  
16 "CAPTURED" printed diagonally over the footage. Before giving any further description of Bolin's  
17 crime, the narrator credits an Illinois viewer for Bolin's capture "in near record time." The narrator  
18 states "Bolin was hiding a secret marijuana crop on a mountain top in California's Sierra Nevadas,  
19 and when three men stumbled on to the plants, Bolin murdered two of them."

20 The footage, just shown, of the Bolin character emerging from the cabin and shooting  
21 Huffstuttler is repeated, followed by the Mincy character saying goodbye to his little girl at the  
22 Mincy family camp site, and then Mincy cowering behind a small boulder pleading for his life as  
23 Bolin, wordlessly smirking, shoots him dead. Footage not previously seen of Donna Mincy, Mincy's  
24 mother, is aired as she explains, "hearing the news [about her son's death] wasn't as bad as having  
25 to tell a little ten-year old child that her daddy was gone, and he wouldn't be back."

26 This sequence is followed by replayed footage of Wilson running, stumbling, falling and  
27 struggling as the real Wilson narrates how he felt like an animal as he was trying to escape.  
28 Previously unaired footage is shown of Wilson speaking to the narrator about essentially falling

1 down the mountain until he received help at a farm. After showing the location on a map and the  
2 actual house at which Bolin was arrested, Mrs. Mincy is then shown with an interviewer explaining  
3 how happy she was when she found out Bolin had been caught. The final scene is the repeated new  
4 footage of Bolin in leg and belly chains at an airport accompanied by authorities.

5 **2. Violent and Criminal Conduct Mentioned in Pretrial Publicity**

6 The newspaper accounts and the narrator in the *America's Most Wanted* dramatization  
7 mentioned four categories of violent and criminal conduct attributable to Bolin. In order of  
8 prominence, first, there was the possession of four pipe bombs, each having the fire power of a hand  
9 grenade. Second, there was his prior manslaughter conviction for shooting Kenneth Ross with a  
10 shotgun during an argument. Third, was his stabbing a man 15 times, but being acquitted because  
11 the jury thought he acted in self-defense. Fourth, was the report that Bolin had been arrested  
12 previously on weapons charges. The incidents that match these reports are, in order:

13 First, regarding the pipe bombs, the discovery of three pipes in the kitchen in the Thompson  
14 Canyon cabin, apparently capable of being converted into actual pipe bombs – September 3, 1989.

15 Second, regarding the manslaughter conviction, Bolin's prior conviction for *attempted*  
16 voluntary manslaughter of Kenneth Ross on September 8, 1981 (conviction May 24, 1983).

17 Third, regarding the January 6, 1986 stabbing of another man 15 times, Bolin's acquittal of  
18 assault with a deadly weapon in Oklahoma.

19 Fourth, regarding prior arrest for weapons there is his arrest for possession of a gun on June  
20 22, 1980.

21 The prior incidents are described in chronological order.

22 **a. Bolin's Arrest for Possession of a Gun, June 22, 1980**

23 There is only one incident that Bolin suffered a prior arrest for "weapons charges" as  
24 published in the *Bakersfield Californian* on January 6, 1990, and stated by the *America's Most*  
25 *Wanted* narrator. That was for a 1980 arrest in Los Angeles County for possession of a gun found  
26 in a leather briefcase, for which no charges were ever filed, and which Bolin's defense counsel  
27 successfully moved to suppress in advance of the penalty trial. The proceedings related to this prior  
28 gun possession arrest took place on January 17, 1991 when Mr. Cater moved to strike the

prosecution's factor #3 in aggravation, that is Bolin's possession of a sub-machine gun on June 22, 1980. After an evidentiary hearing on the matter, at which the arresting officer testified, the trial court found, first, that the weapon was a semi-automatic handgun rather than a sub-machine gun, and second, that there had not been probable cause for the officer to seize and open the briefcase. RT-10: 2330-60; 2367; CT-2: 583. Although the court did not strike the factor, itself, CT-2: 579, the evidence the prosecution would have presented to support it was suppressed and the prosecutor told the court she would not go forward with that factor in aggravation. RT-10: 2390.

**b. Bolin's Prior Conviction for Attempted Voluntary Manslaughter**

Bolin was convicted of attempted voluntary manslaughter of Kenneth Ross in the Los Angeles County Superior Court on May 24, 1983. He was sentenced to prison for five years and received by the California Department of Corrections on June 6, 1983. Exhibit 42: 197. In an early September 1989 article about Bolin, however, the information reported was that Bolin's conviction was for *actual* manslaughter, and that this information had been confirmed with the California Department of Corrections ("CDC"). The information prepared by the District Attorney's Office filed on March 12, 1990, also alleged Bolin previously had been convicted of voluntary manslaughter. CT-1: 125-29. This error was not corrected until December 13, 1990, when the court read the information to the jury before Ms. Ryals was called upon to prove the prior conviction. RT-9: 2248. She did that by introducing and authenticating three official documents, Bolin's booking sheet for this arrest, the "California Penal Code 969(b) package from the California Facility in Vacaville," and "a certified copy of minute orders and docket sheets from the trial in Los Angeles of this particular felony." *Id.*: 2252.<sup>5</sup>

11

11

<sup>5</sup> During penalty proceedings, Ms. Ryals also provided the jury with the circumstances of the crime by eliciting testimony from the victim and witnesses to this September 8, 1981 attempted manslaughter incident. Bolin has submitted further evidence in support of his petition undermining Ms. Ryals' presentation. A complete summary of the testimony elicited at the penalty phase, plus additional evidence Bolin has offered in response to the penalty phase testimony is relevant to Bolin's Claim W5 of the Petition, and not recounted here.

**c. Bolin's Acquittal of for the January 6, 1986 Oklahoma Assault and Battery with a Deadly Weapon**

On August 7, 1985, while Bolin was on parole for the attempted voluntary manslaughter charge, he was granted permission to move to Oklahoma so he could work with a friend who offered him a job. Bolin's CDC records reflect that he had "been accepted by the State of Oklahoma for parole supervision." Exhibit 42: 188. According to a later CDC report, Bolin was arrested in Oklahoma on January 7, 1986 for assault and battery with a deadly weapon when he stabbed Jack Baxter, a former CDC cell mate, following an argument. Baxter apparently struck Bolin with a board and Bolin stabbed Baxter 15 times with a knife. Exhibit 42: 191. This same report notes: "The Oklahoma Parole Agent advises that Baxter is under investigation for a number of crimes and there is a possibility that charges against Subject [Bolin] may be dropped because of self-defense;" and "The supervising Oklahoma Parole Agent indicates he would recommend continuance on parole in the event the charges are dismissed. He describes Subject's adjustment as very good." *Id.*: 192. After Bolin's acquittal, the California authorities nonetheless recommended that Bolin be returned to California Prison. *Id.*

On December 27, 1990, Bolin's (second) investigator, Roger Ruby, interviewed Oklahoma parole officer David Alexander in Durant, Oklahoma about the altercation between Bolin and Jack Baxter. Alexander reported that Baxter was much larger than Bolin and that Bolin probably would "need a weapon to keep Baxter off of him," although he doubted it was necessary for Bolin to have stabbed Baxter 15 times. Alexander reportedly told Ruby "he could never understand why California wanted to put Bolin back in prison especially after he was acquitted in his trial," that Bolin fully cooperated with authorities, and "was an excellent parolee and tried to do everything required of him as he was living in Durant." According to Ruby's report, Alexander stated he would testify for Bolin in Kern County but needed a subpoena to cover him at work. Exhibit 24: 1.

On January 23, 1991, Mr. Cater presented to the court certified copy of the acquittal verdict from this Oklahoma incident and asked that the matter not be brought to the jury's attention. The court granted Mr. Cater's request. RT-10: 2458-59; CT-2: 588.

**d. Proceedings Regarding the Pipe Bomb Evidence**

On September 28, 1990, Ms. Ryals gave notice of the People's intention to use evidence of the pipe bombs as a factor in aggravation of Bolin's sentence at the penalty phase proceedings. CT-1: 229-30. During the pretrial motions on November 1, 1990, Mr. Soria orally moved to strike prosecution aggravating factors #3 and #7. RT-II: 32. Factor #3, as indicated in above in Part VI.A.2.a., *supra*, was the prosecution contention that Bolin had been in possession of a sub-machine gun on June 22, 1980. Factor #7 was evidence that Bolin had pipe bombs in the cabin. When Judge Davis asked about this pretrial motion, Mr. Soria abandoned it saying the matter could be reserved until after the guilt phase proceedings, when the issue of penalty aggravating factors was relevant.

*Id.*: 32-35.

Notwithstanding the pending defense opposition to evidence of pipe bombs, on December 4, 1990, during the guilt phase people's case in chief, Ms. Ryals called senior Deputy Martin Williamson to the stand for his testimony regarding the investigation of the crime scene. Laying the foundation for subsequent testimony of a Sheriff's investigator regarding the marijuana cultivation charge, Ms. Ryals asked him he found something in the cabin that appeared to Deputy Williamson "to be bombs." RT-8: 1862. Deputy Williamson responded that the investigating officers found "what appeared" to them "to be [three] pipe bombs." The investigators then contacted the bomb squad, because they "did not know if there were any other bombs on the property booby-trapped areas." No defense objection to the introduction of the pipe evidence was interposed.<sup>6</sup> Further, on cross examination, Mr. Soria elicited that in addition to the pipes, there was a can of gun powder. *Id.*: 1865. The next witness to testify about the "pipe bombs" was Sergeant Glen Johnson, who was in charge of the bomb squad for the Kern County Sheriff's Department. Sergeant Johnson testified that bombs, explosive devices, and trip wires often are used in areas where narcotics are manufactured or cultivated. *Id.*: 1884-85. He then described three pipes found in the drawer of a small dresser with caps screwed on both ends and wires coming out of one end of each pipe and taped to that hole.

<sup>6</sup> Trial counsel could have objected to this evidence under California Evidence Code section 352 on the grounds that the probative value of this evidence was not sufficient to overcome its prejudicial impact.

1 Photographs of the small dresser, the pipes, and the can of gun powder were introduced into evidence  
2 during his testimony. In the same dresser where the three pipes were found, there was a canister of  
3 gunpowder.<sup>7</sup> The pipes were not loaded with gun powder, although one appeared to have had gun  
4 powder residue inside. *Id.*: 1886-87. During Mr. Cater's cross examination, he elicited from  
5 Sergeant Johnson that it would only take a "matter of seconds" to put powder into one of those pipes  
6 and another "matter of seconds" to wire them through the end caps. *Id.*: 1890.

7 When Mr. Cater renewed the motion to strike prosecution aggravating factors #3 and #7 in  
8 advance of the January 17, 1991 pre-penalty phase hearing, Ms. Ryals responded in her papers, "The  
9 People will not offer factor #7 as a factor in aggravation under Penal Code § 190.3(b) and therefore  
10 will not respond to this motion as it concerns factor #7." CT-2: 552.

### 11                   **3.       Publicity After Bolin's Arrest through Trial**

12 Prior to the March 2, 1990, preliminary examination hearing, four motions for media  
13 coverage of proceedings were filed, one from the *Bakersfield Californian*, to include a still camera  
14 and tape recorder, one from radio station KUZZ, for audio, and one each from television station  
15 Channels 17 and 23. CT-1: 8. Due to the publicity focused on Bolin's case, then co-counsel,  
16 George Peterson, presented a motion to exclude the public from the preliminary examination hearing  
17 and seal the preliminary examination hearing transcript. *Id.*: 9. In addition, he requested that the  
18 motion be heard *in camera*. The court denied the *in camera* hearing, taking into account "the rights  
19 of the public and the news media to be represented by counsel to oppose such a motion." *Id.*: 11.

20 Mr. Peterson argued under Penal Code § 868 that if the preliminary examination hearing were open  
21 to the public, there was a reasonable likelihood of substantial prejudice to Bolin's fair trial rights.  
22 *Id.*: 12-13. Acknowledging the cited case and statutory law, the court noted, "In this particular case,  
23 we have the additional situation of nation wide TV because of a show that purports to have led to  
24 the capture of the defendant in this case. [¶] However, all of that has already occurred and there's

25  
26                   <sup>7</sup> At trial, these photographs were marked People's 63, 64, and 65. Those exhibits were  
27 admitted into evidence on December 6, 1990. RT-9: 2086. Mr. Cater stated he had no objection to  
28 the admission of Exhibits 47 through 67. These photographic exhibits are before the Court in the  
present matter, since, as noted previously, the Warden provided all the trial exhibits to assist the  
Court in evaluating Bolin's claims.

1 [sic] already been numerous stories in the local media about not only the crime, itself, but the  
 2 apprehension of the defendant.” The court determined that even if the hearing were ordered closed  
 3 to the public, the news media would have file photographs and reports of Bolin which could be  
 4 publicized on television, radio, and newspaper. *Id.*: 13-14. In closing the court noted, “There has  
 5 been publicity, there will continue to be publicity whether this hearing is closed or not. [¶] Court also  
 6 has to consider, as the case law indicates, the public’s right to know and the public’s right to access  
 7 a public court room. And in weighing those different factors it’s this court’s opinion that in this case  
 8 the matter should remain open; transcript, when it is prepared, should not be sealed.” The court  
 9 added, “The four media representatives who have requested coverage will be permitted that and,  
 10 again that’s the newspapers [sic], one radio station and two television stations.” *Id.*: 15. Mr.  
 11 Peterson asked that his sealing motion be filed under seal and that was granted. *Id.*: 16.

12 Bolin alleges all of the media exposure led to a trial which apparently was “a real show” for  
 13 the community. Petition, ¶ 104. In support of this allegation, he points to a statement made by Ms.  
 14 Ryals, at the beginning of voir dire: “I think probably these people know what this case is and they  
 15 think it will be fun.” RT-1: 7.

16 Pretrial publicity was not the end of the media interest in the proceedings. Just after the  
 17 jurors were sworn in, on the first day of the trial, December 3, 1990, Judge Davis noted that  
 18 television cameras were permanently set up in the courtroom ready to film witness testimony.<sup>8</sup> On  
 19 Tuesday, December 4, 1990, Judge Davis set out the schedule for the upcoming crime scene visit  
 20 the following Monday, December 10, 1990. He described the trip as follows:

21 We are going to leave between 9:30 and ten o’clock Monday and we will arrange to  
 22 have lunch at the Twin Oaks Store between 11:00 and 11:30. That will be the  
 23 restroom break. [¶] After a sumptuous repast, we will continue the journey up the  
 24 mountain to a place called Five Points where we will off load you from your vans and  
 25 on load you to a series of four-wheel drive vehicles, and you will be ferried the rest  
 26 of the way in those four-wheel drive vehicles, and then we will reverse the situation  
 27 as we come down the mountain, and should be home, 3:30 ish or 4:00, I would think  
 28 on that day. [¶] If you have comfortable walking boots, I would suggest you use  
 those. And as I said to you earlier, the temperatures are in the fifties, unless it’s  
 raining, which will make our trip even more exciting, perhaps *better than Disneyland*.

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<sup>8</sup> The cameramen were admonished not to photograph or film the jurors. RT-7: 1643; RT-8: 1782.

1 RT-8: 1892 (emphasis added).

2 After giving the jurors the end of day admonitions, Judge Davis added, "Oh that reminds me.  
3 We will be tailed by a television crew who will be filming again, and they are ordered not to talk,  
4 and you are ordered not to talk to them." *Id.*: 1892-93.

5 Referencing the upcoming December 10 jury view during a break in the proceedings on  
6 December 5, 1990, Judge Davis stated that the Monday trip had "gotten a little more complicated  
7 and publicized" than he "might wish" and that he did not have the authority to close down the  
8 highways to the crime scene. *Id.*: 1976. He informed the jurors there were "going to be television  
9 stations following us up and down and all around" and admonished the jurors to avoid contact with  
10 any of the television personnel, noting there would be more than one television crew "tailing" them.  
11 *Id.*: 1977.

12 **4. Summary of the Kern County Community Attitude Venue Change  
13 Survey**

14 In advance of the November 1, 1990, motion to change venue, Bolin's trial attorneys, Messrs.  
15 Soria and Cater, commissioned a community survey.<sup>9</sup> Exhibit 52. Three hundred seventeen Kern  
16 County residents, registered to vote and holding California driver's licenses were interviewed to  
17 assess the degree of public awareness of the case as well as predisposition for or against Bolin.  
18 Forty-five percent of the respondents were aware of the case, and 52 percent of that number stated  
19 they saw the *America's Most Wanted* program concerning the crime. That works out to be 23.4  
20 percent of all respondents. Sixty-six percent of the respondents aware of the case were exposed to  
21 pretrial publicity other than the *America's Most Wanted* program. That works out to be 29.7 percent  
22 of all respondents. There is an obvious overlap between the 52 percent who saw the *America's Most*  
23 *Wanted* program and the 66 percent of those exposed to other publicity. Some respondents were  
24

25 <sup>9</sup> The Kern County Survey was lodged as part of Supplemental Clerk's Transcript on June  
26 24, 2005. It is unknown whether the California Supreme Court was presented with this document  
27 on state habeas. The Warden's June 23, 2005 notice of lodging states that the survey, along with  
28 other documents, came from his (attorneys') files and were being lodged "with this Court for  
consideration in connection with these [federal habeas] proceedings" (Doc. 124). For ease in  
reference, the Court will cite to Bolin's Exhibit 52 when referencing this document.

1 exposed to both.<sup>10</sup> Of the 45 percent who were aware of the case, 60 percent believed Bolin to be  
 2 guilty. That works out to be 27 percent of all respondents. The percentage of respondents who  
 3 believed Bolin to be guilty was slightly higher in the category who saw the *America's Most Wanted*  
 4 program, that is, 66 percent.<sup>11</sup> *Id.*: 3.

5 The survey concludes there existed a “very strong statistical association” between  
 6 “respondent predisposition toward guilt” and the viewing of the *America's Most Wanted* program.  
 7 The survey reports that “respondents who did not view the program are more inclined to say that they  
 8 need more information to form an opinion about the case than those who viewed the program.” The  
 9 survey compared 58 percent with 23 percent of the respondents. *Id.*: 4.

10 With respect to penalty, respondents aware of the case were asked whether they would favor  
 11 life without parole or the death penalty if Bolin were convicted of the charges. Sixty-nine percent  
 12 favored the death penalty, 14 percent favored life without parole, and 17 percent stated they would  
 13 need more information to form an opinion. *Id.*: 4-5. Comparing respondents who saw the *America's*  
 14 *Most Wanted* program against those who did not see it, the percentage favoring the death penalty was  
 15 76 percent for those who saw it versus 61 percent who did not see it. *Id.*: 5.

16 Asked whether the *America's Most Wanted* program featuring this case led respondents to  
 17 favor the death penalty as a general proposition, 79 percent stated it did. Seventeen percent stated  
 18 the program led them to favor life without parole and 4 percent indicated they did not form an  
 19 opinion. *Id.*

20 **5. Hearing on the Change of Venue Motion**

21 The venue change motion was heard on November 1, 1990, along with other *in limine*  
 22 motions. RT-II: 3-50. The first part of the hearing was devoted to marking exhibits. Exhibit A

24  
 25 <sup>10</sup> The survey later indicates that 77 percent of respondents who had seen the *America's Most*  
 26 *Wanted* program thought Bolin was guilty, compared to 41.5 percent of respondents who had not  
 27 seen the program and thought Bolin was guilty.

28 <sup>11</sup> The survey also states: “Those who viewed the television program are much more likely  
 29 to say that the defendant is guilty of the charges than those who did not [view the program] (77  
 30 percent versus 41.5 percent guilty).” This statement is puzzling because it overstates the 66 percent  
 31 figure quoted in the text.

1 included local newspaper articles and the Community Attitude Survey. Exhibit B was comprised  
2 of the January 7, 1990, *America's Most Wanted* episode about the case. Exhibit C was the January  
3 14, 1990, follow-up *America's Most Wanted* excerpt about Bolin's capture. Exhibit D was a  
4 Channel 29 extended news report about the case. The first order of business was for the court to  
5 view Exhibits, B, C, and D. The narration and dialogue of all the exhibits were transcribed into the  
6 record. The initial *America's Most Wanted* program is at RT-II: 7-16; the follow-up excerpt is at *id.*:  
7 16-18; and the local news program is at *id.*: 18-20.

8 After the audio-video tape of the *America's Most Wanted* episode about Bolin, the follow-up  
9 story, and the Channel 29 news account were shown, Mr. Soria stated:

10 The Court has just viewed our problem, your Honor. Anybody that has particularly  
11 viewed that program has basically seen the prosecution's side without any cross-  
12 examination. That certainly – first – the first tape is certainly Wilson's statement  
13 made into a movie. If the Court has reviewed the change of venue [motion], anybody  
14 who has seen that program has already convicted our client and believes the  
appropriate sentence is death or, at least, 75 percent according to the survey that we  
have done in this county.

15 RT-II: 21

16 Pointing to page 5 of the survey, Mr. Soria then conceded the percentage was only 61 percent.<sup>12</sup> *Id.*  
17 Continuing he noted that 45 percent of the people polled had knowledge of the case by some way  
18 of media exposure. *Id.*: 21-22. He explained:

19 Our main problem, your Honor, if the Court is not inclined to grant the change of  
20 venue [motion], the defense cannot tolerate jurors who have seen the program sitting  
in judgment of our client. We would ask that anybody who has seen the program be  
excused for cause without even bothering to question.

21 *Id.*: 22. Judge Davis then noted that the *America's Most Wanted* program was broadcast nationally,  
22 so everyone might have seen it, and then acknowledged the defense argument "that when they [the  
23 *America's Most Wanted* producers] said Kern County, everybody in Kern County perked their ears  
24 up." *Id.* Mr. Soria then conceded that exposure to pretrial publicity by only 45 percent of those  
25 surveyed was "quite a low percentage to get a change of venue." *Id.*: 23. Mr. Soria then pointed

26  
27 <sup>12</sup> Mr. Soria's concession misrepresented the survey results. He was correct the first time  
28 when he said at least 75 percent of the respondents who watched the program believed Bolin should  
suffer the death penalty. The survey reported 76 percent favored the death penalty of the respondents  
who has seen the program, and 61 percent in favor of the respondents who had not seen it.

out the claim of the *Most Wanted* program that Bolin killed a man in 1981 was not true. Rather, Bolin had been convicted of attempted manslaughter. The court commented that because neither Bolin nor the victims were national figures, “but for this re-enactment [the *America’s Most Wanted* program], it would not be appropriate to change the venue.” *Id.*: 23.<sup>13</sup>

Following this colloquy, Mr. Soria erroneously informed the court that according to the survey, only 20 percent of the people who knew about the case had seen the *America's Most Wanted* program about it. The correct percentage reported in the survey was that 52 percent of the people who knew about the case specifically had seen the *America's Most Wanted* episode and a total of 66 percent were aware of the case from publicity *other* than from the *America's Most Wanted* program.<sup>14</sup>

Ms. Ryals' primary opposition to the venue change motion was that Bolin had not established he couldn't get a fair trial. She specifically mentioned the figure 9 percent, which would be 20 percent of 45 percent, as being insufficient. RT-II: 24. But, as noted above, and demonstrated by the summary of the survey, far more than 9 percent of the Kern County community population had seen the *America's Most Wanted* program and were familiar with the case through other media exposure. Next, Ms. Ryals argued there was no way to know if even one person on voir dire would have seen the *Most Wanted* program. She did concede that the show probably was inflammatory, but that the defense failed to show Kern County was so prejudiced Bolin could not get a fair trial. She suggested that this case may be like others in the past where a large portion of people exposed to publicity didn't even remember when called for jury duty. She also criticized the survey because it didn't inquire whether people who had seen the program could put it aside if selected as jurors. *Id.*: 25. She urged the court that the case shouldn't be moved somewhere else because a small percentage of people in Kern County saw the program. *Id.*: 26.

<sup>13</sup> In later proceedings, namely on November 8, 1990, after voir dire examination of juror Michael Vaughn, Judge Davis stated he had not read any of the *Bakersfield Californian* newspaper articles offered by the defense. RT-2: 385-86. See Part VI.A.6., *infra*.

<sup>14</sup> Of the total survey population, 23.4 percent (45 x 52) had seen the *America's Most Wanted* program and 29.7 percent (45 x 66) had seen other the *America's Most Wanted* segment or news accounts of the case.

1 In response, Judge Davis commented:

2 I recognize that and what you say is true, Ms Ryals, but I must say that we, in the  
3 business, pride ourselves that we can rise above publicity. I don't know whether the  
4 average person viewing this particular program, Exhibit B, psychologically will be  
able to do that. It's quite dramatic.

5 *Id.* This observation was tempered when Mr. Soria confirmed the judge's question, "Am I to  
6 understand what percentage of the people in this country saw the program, 19 percent?" Mr. Soria  
7 confirmed the percentage was "a little over 15 percent." It is entirely unclear from whence this  
8 information is derived. As set out above, Question 4 of the survey asked if the respondent had seen  
9 the *America's Most Wanted* program about the present case. Of the 317 people in the survey, 23.4  
10 percent said they had.

11 Ultimately, instead of ruling on the motion, the court reserved its ruling to see how many  
12 prospective jurors actually had seen the *America's Most Wanted* program and then to see how those  
13 people responded to questions advanced by the defense lawyers.

14 As to this motion to change venue, Mr. Soria, what I think I'm going to do with that  
15 is to reserve ruling on it. I want to see first of all how many prospective run-ins we  
16 get who actually have seen this video and then I would like to take a few of those and  
17 I realize you and Mr. Cater would have a great many questions that may not be  
necessary and see what their general reaction is. [¶] Frankly, if I think there are  
general reactions, if – if there are general reactions, what I think there is, I think I  
might be inclined to give a blanket for cause. [¶] So your motion is reserved, Mr.  
Soria, I guess is what I'm saying.

19 *Id.* at 50. Judge Davis then reiterated his earlier comment, "but for this re-enactment on *America's*  
20 *Most Wanted*, I do not think there are grounds to change the venue on any of the criteria that we have  
21 before us concerning that." *Id.*

22 **6. Summary of the Voir Dire**

23 Publicity about Bolin's crimes was prevalent among the venire from which Bolin's jury was  
24 selected. Out of 171 jurors who survived initial hardship excusals and were individually questioned  
25 about their exposure to publicity and views about the death penalty, 66 reported varying degrees of  
26 knowledge about the case and exposure to one or more sources of pretrial publicity.<sup>15</sup> Appendix V

28 <sup>15</sup> Bolin's papers state 147 and the Warden claims 152 prospective jurors survived the  
hardship process. The Court cannot account the differences, but relies on its own careful review.

1 recounts the voir dire testimony of 59 prospective and 7 actual jurors who had been exposed to  
 2 pretrial publicity, including newspaper articles, television news reports, trailers for the *America's*  
 3 *Most Wanted* program, the actual *America's Most Wanted* segment featuring Bolin, and the follow-  
 4 up segment on *America's Most Wanted* after Bolin was apprehended. Appendix VI is a table  
 5 summarizing voir dire responses of these 66 individuals as to the source of publicity to which they  
 6 were exposed, whether their testimony indicated their response on the questionnaire about Bolin's  
 7 guilt, their level of recollection about the crime, whether they could put the publicity to which they  
 8 had been exposed out of their minds, whether they were subject to a cause challenge, and whether  
 9 they were excused on other grounds.

10 With one exception, where a prospective juror reported having been exposed to the  
 11 *America's Most Wanted* episode or follow-up programming about Bolin, Messrs. Soria and Cater  
 12 advanced a cause challenge.<sup>16</sup> Where a cause challenge was predicated solely on exposure to an  
 13 *America's Most Wanted* broadcast *and* the juror reported that she or he could put publicity out of her  
 14 or his mind, the challenge was denied. This process occurred 19 times during the course of voir dire,  
 15 including for six of the seven actual jurors who sat on Bolin's petit jury. About a third of the way  
 16 through voir dire, after Mr. Cater moved to challenge prospective juror Dawn Albitre for cause  
 17 because she had watched the *America's Most Wanted* episode about Bolin, he asked Judge Davis for  
 18 "some advisement." In frustration, he asked (rhetorically), "What do I have to do to get someone  
 19 who has seen this off this jury?" See Appendix V, Part One, 11. In several cases, prospective jurors  
 20 who had been exposed to the *America's Most Wanted* program were challenged by defense counsel  
 21 after reporting they could *not* be impartial based on publicity, they would automatically vote for the  
 22 death penalty if Bolin were convicted of the pending charges, or would be inclined to find Bolin  
 23 guilty if he failed to testify.

24 The voir dire responses also show that 45 individuals, whether or not exposed to the  
 25 *America's Most Wanted* program had a good to excellent recollection of the crime, while only 12  
 26 had no or a limited recollection and three had a limited to good recollection. Four of the 45

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27  
 28 <sup>16</sup> The exception was Meri Hatfield, who stated she may have watched the *Most Wanted*  
 episode about Bolin, but remembered nothing about it. Defense counsel did not challenge her.

1 individuals with a good to excellent recollection of the crime were selected to serve on the petit jury.  
2 Nine individuals in the good to excellent recollection category had not seen any production or  
3 production portion of the *America's Most Wanted* program, including one of Bolin's actual jurors.<sup>17</sup>

4 The issue of whether the *America's Most Wanted* program was the primary source of juror  
5 knowledge about the crimes is illustrated by voir dire examination of one prospective juror  
6 ultimately selected to sit on the petit jury, which generated considerable argument between counsel.  
7 That juror, Michael Vaughn, explained on voir dire that he acquired his knowledge about the crime  
8 based on his reading of articles in the *Bakersfield Californian* and that he also saw the follow-up  
9 *America's Most Wanted* segment describing Bolin's arrest. *See Appendix V, Part Two, 3.* Mr. Cater  
10 vehemently argued (out of Mr. Vaughn's presence) that he was unqualified to sit on the jury because  
11 his knowledge about the crime obviously came from viewing the main Bolin *America's Most Wanted*  
12 episode. Judge Davis, however, stated that he believed Mr. Vaughn had not seen the *America's*  
13 *Most Wanted* program, but rather that his knowledge about the case from the *Bakersfield*  
14 *Californian*. Ms. Ryals argued in support of the judge's view, noting that the key facts Mr. Vaughn  
15 recollected had been published in the newspaper as well as re-enacted on the *Most Wanted* program,  
16 concluding "what was in the news and what was on that television show were basically the same  
17 things." *See Appendix V, Part Two, 3.*

18 A great many prospective jurors, including those actually selected, also wrote on their  
19 questionnaires they believed Bolin to be guilty of the pending charges (either probably or definitely).  
20 The number of individuals in this category is 24 for prospective jurors (40.6 percent) and three for  
21 actual jurors (42.8 percent). The tally on this fact is incomplete, however, since the only information  
22 available to the Court is voir dire inquiries about the questionnaire responses. If a prospective juror  
23 wasn't asked about what she or he marked on her or his questionnaire and the issue wasn't explored  
24 on voir dire, the information is unknown. Twenty-nine individuals, including three actual jurors fall  
25 into the "not asked" category. In some of these cases the prospective juror's statement of partiality  
26 about the death penalty or feelings about Bolin's guilt if he did not testify led to a granted cause

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27  
28 <sup>17</sup> That juror was Gilbert Barnes.

1 challenge before in depth questioning. This occurred in 15 of the 29 instances where individuals  
 2 were not asked about their questionnaire responses.

3 Neither party spends much effort describing the peremptory challenges, but because Bolin's  
 4 attorneys failed to exhaust the 20 challenges to which Bolin was entitled, the peremptory challenge  
 5 process was relevant. The following table illustrates the peremptory challenges of 30 jurors seated  
 6 for the petit jury.

Prospective Juror Seated	Prosecution Challenge	Defense Challenge
Thomas Hale		1634 2nd
Nancy Bureaga	1632 1st	
Dawn Albrite		1632 1st
Meri Hatfield	1637 12th	
Janice Lucas	1636 11th	
Shirley Sabe	1637 13th	
Mary Badgley	1633 2nd	
William Goff	1633 3rd	
Patricia Hinson		
Ralph Lopes		
Anthony Zaninovich	1638 14th	
Gwendolyn Holder	1634 4th	
Robert Bowles		
Bobby O'Neal	1635 6th	
Ginger Lewis	1635 5th	
Pamela Fuson	1636 9th	
Julie Hanson		
Connie Pauley		
Dina Romero	1635 7th	
Ronald Sprague	1636 8th	
John Medina		
Gilbert Barnes		

1	Arthur Cordova	1636 10th	
2	Beverly Lauer		
3	Randall Griffin		1637 3rd
4	Douglas Zimmerman		1637 4th
5	Dale Campbell		
6	Jeannine Lee		
7	Steven Parkison		
8	Michael Vaughn		

9 RT-7: 1632-38

10  
11 This next table shows peremptory challenges exercised with respect to the alternate jurors.

12 13 14 15 16 17 18 19 20 21 22	Prospective Alternate	Prosecution Challenge	Defense Challenge
Clifton Journey	1639 3th		
Donald Newberry			
Gloria Hawkins	1639 1st		
Robert Oglesby	1639 2nd		
Jody Pedrin			1639 1st
Sherry Hickman			
James Iseminger			
Kirsey Newton	1640 4th		
Linda Crawford			1640 2nd
Cynthia Underwood			

23 *Id.*: 1638-40.

24 **7. Offers of Proof**

25 Bolin offers three exhibits regarding the background of case-related publicity, including the  
26 Kern County Community Attitudes Venue Change Survey, the newspaper reports, and DVD  
27 recordings. Exhibits 52, 53, and 54. The content of the evidence presented in these exhibits is  
28 described in Part VI.A.1., *supra*. For prevailing professional norms, Bolin offers the 1989 ABA

1 Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, the 1987  
2 National Legal Aid and Defender Association (NLADA) Standards for the Appointment of Counsel  
3 in Death Penalty Cases, excerpts from the California Death Penalty Defense Manual (1986 through  
4 1989) regarding jury selection as well as pretrial motions for change of venue, and the declaration  
5 of *Strickland* expert, James S. Thomson. Exhibits 57, 58, 59, 60, and 72, respectively. For evidence  
6 regarding the performance of counsel, he offers the declarations of Mr. Soria, Mr. Cater, and Mr.  
7 Thomson (Exhibits 65, 66, and 72, respectively).

8 The relevant portion of Mr. Soria's declaration as to Claim C is summed up in one paragraph:

9 We knew it was important to keep off the jury the people who had seen the segment  
10 about the case on "America's Most Wanted." I do not recall any strategic reason why  
11 we would not have renewed the change of venue motion after voir dire, unless we felt  
we had been successful in selecting a jury of people who had not seen "America's  
Most Wanted."

12 Exhibit 65, ¶ 8. Mr. Cater's declaration on the subject also discloses a lack of strategy for failure  
13 to renew the change of venue motion:

14 The change of venue motion was particularly important, because the Bolin case had  
15 received a lot of publicity. I am not aware of any strategic decision not to renew that  
16 motion following voir dire, and I do not know why Mr. Soria failed to do so. I  
cannot explain why I did not prompt him to do so. If we failed to get a final ruling,  
it was a mistake.

17 Exhibit. 66, ¶ 20. With respect to failure to exercise more of Bolin's peremptory challenges, Mr.  
18 Cater's declaration avers: "I do not recall any strategic decision not to peremptorily excuse jurors  
19 we had previously challenged for cause." *Id.*, ¶ 23.

20 Mr. Thomson's declaration relative to Claim C stresses the importance of defense counsel  
21 obtaining a final, definitive ruling on a change of venue motion, which Messrs. Soria and Cater did  
22 not do. Mr. Thomson avers, "The defense bar knows that counsel must obtain a final ruling on a  
23 motion in order to preserve an issue for appeal." Exhibit 72, ¶ 47. Noting Mr. Soria's averment of  
24 not recalling any strategic reason for failing to renew the change of venue motion unless he and Mr.  
25 Cater had been successful in selecting a jury of people who had not seen the *America's Most Wanted*  
26 program, Mr. Thomson declares:

27 Unfortunately, counsel had not been successful in that regard: four seated jurors (Lee,  
28 Vaughn, Hanson, and Bowles) disclosed that they had seen the *America's Most  
Wanted* episode regarding Mr. Bolin [Record citation.] Another seated juror (Barnes)

1 admitted to being influenced by newspaper reports about the case. [Record citation.]  
 2 Failure to renew the venue motion under these circumstances is inconsistent with  
 3 prevailing professional norms at the time of Mr. Bolin's trial.[<sup>18</sup>]

4 Exhibit 72, ¶ 48. Mr. Thomson also is highly critical of Bolin's trial attorneys for their failure to  
 5 exercise only four of the 20 available peremptory challenges, especially for the individuals who had  
 6 watched the *America's Most Wanted* program (or follow-up) and Mr. Barnes, who had been  
 7 persuaded of Bolin's guilt from reading the newspaper. *Id.*, ¶ 51.

8 **B. Bolin's Argument**

9 Bolin first argues the trial court erred by not granting his motion to change venue because  
 10 the record demonstrated presumed as well as actual prejudice. Citing *Rideau v. Louisiana*, 373 U.S.  
 11 723, 726-27 (1963) and *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966), he claims prejudice should  
 12 have been presumed because the Kern County community was saturated with prejudicial and  
 13 inflammatory publicity about the crime. Acknowledging that claims of presumed bias have been  
 14 rejected where media reports have been primarily factual, citing *Harris v. Pulley*, 885 F.2d 1354,  
 15 1362 (9th Cir. 1988), he maintains the publicity in Bolin's case could not be characterized as  
 16 primarily factual. Rather, the articles in the *Bakersfield Californian* contained what Bolin  
 17 characterizes as "a broad array of misinformation," including that his marijuana "plantation" was  
 18 rigged with pipe bombs and other booby traps, that Bolin was a former Navy SEALS explosives  
 19 expert, that he and a second fugitive were likely armed with pipe bombs and "numerous other  
 20 unknown type weapons," that Bolin was a "convicted killer," and a connection between Bolin's  
 21 marijuana cultivation efforts with other marijuana operations in Walker Basin. Moreover, he argues,  
 22 the *America's Most Wanted* program and subsequent follow-up broadcasts conflated fact and fiction,  
 23 deliberately stirring up public sentiment against Bolin. He points to three examples of evoking  
 24 viewer sentiment: 1) the fact that Wilson was portrayed as a clean-cut young man with a bright  
 25 future; 2) family ties in the Mincy family, especially the touching interaction between Mincy and his

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26  
 27 <sup>18</sup> The Court's review of the voir dire, Appendix V, indicates that six of Bolin's jurors,  
 28 Jeannine Lee, Michael Vaughn, Dale Campbell, Julie Hanson, Patricia Hinson, and Robert Bowles  
 saw the initial *America's Most Wanted* episode or the follow-up episode (which repeated salient  
 excerpts from the initial broadcast).

1 young daughter; and 3) the fact that Mincy had put his past drug use behind him. These were factors  
 2 with which viewers could identify, in contrast to *America's Most Wanted*'s portrayal of Bolin as a  
 3 "grizzled mountain man without community or families ties." The effect of this publicity, Bolin  
 4 argues, is reflected in the results of the Community Attitude Survey as well as the fact that numerous  
 5 prospective jurors and actual jurors exposed to publicity had drawn conclusions about Bolin's guilt  
 6 prior to trial. He also notes that the trial judge repeatedly noted that the *America's Most Wanted*  
 7 program was graphic in its depiction of violence and dramatic in style. This occurred in the voir of  
 8 Nancy Porter, Daniel Webb, Hal Hannah, Linda Jackson, and Shirley Sabo.<sup>19</sup>

9 He argues the publicity in his case was comparable to prejudicial news accounts publicized  
 10 in *Daniels v. Woodford*, 428 F. 1181 (9th Cir. 2005), where the denial of habeas relief was reversed  
 11 because of presumed prejudice affecting the jurors. He claims the coverage of his case meets the  
 12 three factors described in *Daniels*, that is, 1) a barrage of inflammatory publicity immediately prior  
 13 to trial amounting to a huge wave of public passion, 2) the absence of primarily factual news  
 14 accounts, and 3) inclusion in those reports of prejudicial material not admissible at trial. *Id.* at 1211.  
 15 He also points out that publicity attending the case immediately after the crime was discovered and  
 16 Bolin's apprehension continued into the trial, where the media maintained a continued presence in  
 17 the courtroom. He offers the statement of prosecutor Ms. Ryals that the people reporting for jury  
 18 service would know about the case and think the experience would be "fun" as further support for  
 19 the pervasive influence of media attention and publicity.

20 Bolin also argues actual prejudice among the prospective and actual jurors should have  
 21 impelled the trial judge to grant the venue change motion sua sponte following voir dire. Quoting  
 22 *Patton v. Yount*, 467 U.S. 1025, 1035 (1984), he sets forth the standard: "The relevant question is  
 23 not whether the community remembered the case, but whether the jurors [ ] had such fixed opinions  
 24 that they could not judge impartially the guilt of the defendant." Because Bolin maintains so many  
 25 prospective jurors and actual jurors believed in his guilt before voir dire, he argues the reliability of

---

26  
 27       <sup>19</sup> See Appendix V, Part One, 27 (Nancy Porter), 30 (Daniel Webb), 39, (Hal Hannah), 41  
 28 (Linda Jackson), 48 (Shirley Sabo). Bolin also notes that in the voir dire of two other prospective  
 jurors, Donald Pearson and George Atkisson, the jurors mentioned that the *America's Most Wanted*  
 program about Bolin was "graphic." See Appendix V, Part One, 4 and 13.

1 later assurances of impartiality cannot be credited, citing *Murphy v. Florida*, 421 U.S. 794, 803  
2 (1975). Pointing to the results of voir dire questioning, Bolin claims the high level of prejudice seen  
3 in the questioned prospective jurors as a whole casts doubt on the ability of the seven sitting jurors,  
4 who also had been exposed to pretrial publicity, to have remained impartial.<sup>20</sup> Relying on *Irvin v.*  
5 *Dowd*, 366 U.S. 717 (1961), he denigrates the subsequent “rehabilitation” of these jurors:

6 With such an opinions permeating their minds, it would be difficult to say that each  
7 could exclude this preconception of guilt from his deliberations. The influence that  
8 lurks in an opinion once formed is so persistent that it unconsciously fights  
9 detachment from the mental processes of the average man.

10 *Id.* at 727.

11 In his reply brief, Bolin acknowledges the ruling of the California Supreme Court on direct  
12 appeal that he abandoned the trial error claim for not renewing his venue motion after voir dire, as  
13 his attorneys were invited to do by the trial court. 18 Cal. 4th at 312-13. He argues, however, that  
14 because the cause for this procedural default was ineffective assistance of trial counsel, and  
15 ineffective assistance of counsel is part of the same claim, both the trial error and attorney error  
components must be considered together.

16 Based on the record and the fact Judge Davis did invite Messrs. Soria and Cater to renew  
17 their venue motion after voir dire, Bolin has a significant arsenal of claimed constitutional  
18 professional incompetence. Not only did counsel fail to renew the venue motion, they also failed  
19 to request a blanket excusal of all prospective jurors who had seen the *America's Most Wanted*  
20 program after Judge Davis gave an indicated ruling that he would grant a blanket cause challenge  
21 excluding prospective jurors who had seen the *America's Most Wanted* program if their “general  
22 reaction” demonstrated lack of impartiality.

23 Bolin argues that the failure of his attorneys to act was not part of any litigation strategy,  
24 since they never conceded propriety of venue in Kern County, and never abandoned the position that  
25 prejudicial media coverage tainted the jury. He points to the rhetorical question Mr. Cater made of  
26 the trial court after the voir dire of prospective juror Dawn Albitre (who had seen a re-recorded video

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28 <sup>20</sup> As identified in Appendices V and VI, *infra*, those jurors were Gilbert Barnes, Jeannine  
Lee, Michael Vaughn, Dale Campbell, Julie Hanson, Patricia Hinson, and Robert Bowles.

1 *America's Most Wanted* program, had been in Walker Basin the weekend of the crime, and  
2 demonstrated an excellent recollection of the crime): "What do I have to do to get someone who has  
3 seen this off of this jury?" Bolin maintains that rather than attempt to vindicate his Sixth  
4 Amendment right to an impartial jury, counsel abdicated their professional responsibility.

5 Recounting the factors to be considered in ruling on a venue change motion, Bolin maintain  
6 Messrs. Soria and Cater would have been successful had they renewed it. Those factors include: 1)  
7 the extent and kind of publicity; 2) the size of the community in which the crime occurred; 3) the  
8 nature and gravity of the crime; and 4) the standing of the victim and accused in the community,  
9 citing *Martinez v. Superior*, 29 Cal. 3d 574, 578 (1981). He argues the Community Attitude Survey  
10 and voir dire responses both demonstrated widespread publicity which generated a belief in Bolin's  
11 guilt, the nature of the crime could not have been more serious, and although neither the victims nor  
12 Bolin were public figures, their respective social standing was highlighted in the print and broadcast  
13 reports as well as in *America's Most Wanted*.<sup>21</sup> To bring home the ineffective performance of  
14 Messrs. Soria and Cater, Bolin refers to several of the defense manual texts and ABA guidelines  
15 offered to support his contentions, noting that many resources available to defense counsel at the  
16 time Bolin's trial was conducted definitely advised to push for a change of venue in the face of  
17 prejudicial publicity and to preserve the client's arguments for appeal.

18 **C. The Warden's Argument**

19 Citing the California Supreme Court opinion on direct appeal, the Warden argues procedural  
20 default on the trial error claim. *Bolin*, 18 Cal. 4th at 312-13. Similarly, he cites the Supreme Court  
21 opinions for rejection of the ineffective assistance of counsel claim on the merits. *Id.* at 313-14. The  
22 Warden's reliance on the state court's opinion is the cornerstone of his argument:

23 Counsel's failure to renew the change of venue motion did not result from ignorance  
24 or inadvertence and reflected a reasonable trial strategy. [Citation.] The impact of the  
25 pretrial publicity generally and the *America's Most Wanted* episodes in particular was  
26 a critical focus of the voir dire. Although many prospective jurors had been exposed  
27 to some pretrial publicity, including the segment re-enacting the killings, for the most  
28 part few recalled the specifics or had formed a resolute impression of defendant's

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<sup>21</sup> The Court takes Bolin's omission of discussion about the size of the community factor as a concession that his element did not militate in favor of the requested venue change.

1       guilt. In particular, those who eventually sat on the jury all gave assurances they  
2       would decide the case based solely on the courtroom evidence. [Citation.]

3       In light of these responses, counsel could well have recognized the effect of  
4       the publicity had not been as substantial as feared, especially after an 11-month  
5       interim. Thus, renewed effort to seek a change of venue would be futile since the  
6       trial court had conditioned any change in its tentative ruling on a determination the  
7       television coverage had impaired the ability to assemble an impartial jury. In  
8       addition, the re-enactment was relevant only to the guilt phase portion of the trial.  
9       With guilt virtually a foregone conclusion, counsel's concern may at that point have  
10      turned to the penalty phase, which was substantially insulated from the effect of  
11      pretrial publicity. [Citation.] Given the possibility of a valid trial tactic, we reject this  
12      claim of ineffective assistance. [Citation.]

13      *Id.* at 314.

14      Focusing solely on the ineffective assistance of counsel claim, the Warden argues Bolin has  
15      presented no evidence to undermine the reasonableness of the California Supreme Court decision  
16      that the failure of Messrs. Soria and Cater to renew the venue motion was tactical. Further, he  
17      maintains, Bolin cannot demonstrate prejudice because he has not shown the motion had any  
18      reasonable probability of success, or even if granted, that the outcome of the trial or sentence would  
19      have been different. For this proposition he cites *Meeks v. Moore*, 216 F.3d 951, 961 (11th Cir.  
20      2000), *Heath v. Jones*, 941 F.2d 1126, 1136 (11th Cir. 1991), *Braun v. Ward*, 190 F.3d 1181, 1189  
21      (10<sup>th</sup> Cir. 1999), and *Williams v. Vasquez*, 817 F. Supp 1443, 1477 (E.D. Cal. 1993).

22      The Warden's bottom line is that Bolin has not and cannot establish either presumed or actual  
23      prejudice. Citing *Murphy*, 421 U.S. 794, the Warden states that a finding of presumed prejudice  
24      requires consideration of whether the atmosphere surrounding the trial was inherently prejudicial.  
25      *Id.* at 798. Continuing, he maintains, presumed prejudice is invoked only in extreme situations,  
26      citing *United States v. McVeigh*, 153 F.3d 1166, 1181 (10th Cir. 1998), such as where there has been  
27      a "deluge of publicity" and media attention creates a "carnival atmosphere," citing *Sheppard*, 384  
28      U.S. at 358, or where there has been a "barrage of inflammatory publicity immediately prior to trial,"  
29      citing *Murphy*, 421 U.S. at 798, or a "huge wave of public passion," *Irvin*, 366 U.S. at 728, or where  
30      the majority of the populace has been "exposed repeatedly and in depth to the spectacle of [the  
31      defendant] personally confessing in detail to the crimes," citing *Rideau*, 373 U.S. at 726. The  
32      Warden argues no comparably extreme situations existed in Bolin's case.

1       Relying on Mr. Soria's oral argument at the November 1, 1990, change of venue motion, the  
 2 Warden notes Bolin (through counsel) conceded that according to the Community Attitude Survey,  
 3 the number of Kern County residents who had heard of his case was small compared to other cases  
 4 where venue motions had been granted. The Warden correctly recounts that Mr. Soria represented  
 5 to the trial court that only about 15 percent of Kern County residents interviewed for the survey had  
 6 viewed the *America's Most Wanted* program.<sup>22</sup> The Warden then (incorrectly) attributes to Mr. Soria  
 7 the observation of Judge Davis that but for the *America's Most Wanted* program, the nature and  
 8 extent of the other news coverage did not warrant a change of venue. Next he argues that since  
 9 *America's Most Wanted* was broadcast nationally, if that was the criteria for cause challenges, Bolin  
 10 might have faced exposure to the program where ever venue was transferred had the motion been  
 11 successful.

12       Next, the Warden claims the evidence Bolin presents does not undermine the California  
 13 Supreme Court's finding that publicity in the case did not warrant a change of venue (or concomitant  
 14 ineffective counsel for failure to renew the motion). He notes that only a total of ten articles were  
 15 published,<sup>23</sup> six in the first six days after the murders and another four near the time of the airing of  
 16 the *America's Most Wanted* episodes featuring Bolin. He claims the high court's finding that most  
 17 news articles appeared almost a year before Bolin's actual trial is fully supported.

18       On the issue of actual prejudice, the Warden's argument again is premised on the finding by  
 19 the California Supreme Court that the voir dire proceedings established Bolin could receive a fair  
 20 trial in Kern County. In support of this finding, the Warden recounts the number of jurors remaining  
 21 after hardship excusals (which he sets at 152) and the bases for various cause challenges as well as  
 22 peremptory challenges advanced by the prosecution and defense. His only remark about exposure  
 23 to publicity is the conclusion that many of the jurors who had been exposed to publicity "either did  
 24

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25       <sup>22</sup> As pointed out in both Part VII.A.4. and 5., this figure was incorrect and not based on the  
 26 survey results at all. The survey indicated that of those people interviewed, 45 percent were familiar  
 27 with the case and 52 percent of that group had seen the *Most Wanted* program. That works out to  
 slightly over 23 percent.

28       <sup>23</sup> Eleven articles were presented to the trial court on the venue change motion and eleven  
 are part of the record here.

1 not sit on the jury because they were not ultimately called to do so or were excused for other reasons,  
2 such as their views on the death penalty, their medical conditions, or their predisposition about  
3 certain facts of the case.” Based on the direct appeal opinion, the Warden concludes that of the 12  
4 jurors selected for the jury, not one was familiar with the facts of Bolin’s crimes, none appeared to  
5 remember any significant details of the crimes, all assured the court they could decide the case on  
6 the evidence presented at trial, and all assured the court and counsel they could be fair and impartial  
7 jurors. Since this is a reiteration of a state court finding, he continues, it is subject to AEDPA  
8 deference under § 2254(d)(2).

9 **D. Analysis**

10 The evaluation of Claim C has several components. First there are the two theories – trial  
11 error and ineffective assistance of counsel. Second, the ineffective assistance of counsel claim must  
12 be evaluated for satisfaction of the deficient performance and prejudice elements. Third, there is  
13 the overarching authority regarding a defendant’s right to a change of venue to vindicate his right  
14 to trial by an impartial jury. Finally, in the course of addressing these legal theories, the Court must  
15 determine whether the state court’s factual findings on direct appeal and decisions on direct appeal  
16 as well as state habeas are or are not unreasonable under the deferential review of § 2254(d)(1) and  
17 (2).

18 **1. Claimed Trial Error**

19 The Court agrees with the Warden’s argument with respect to the trial error portion of Claim  
20 C. The ruling by the California Supreme Court on direct appeal is dispositive and clearly not  
21 unreasonable. Accordingly, it is not necessary to address the Warden’s argument that the trial error  
22 component is procedurally barred.

23 In the opinion, the state court notes “it is not error for the trial court to postpone the  
24 consideration of an application for a change of venue until an attempt is made to impanel the jury,  
25 where leave is granted to counsel to renew his application if the facts disclosed . . . warrant it.” 18  
26 Cal. 4th at 312. Habeas review under § 2254(d)(1) cannot disturb this ruling unless it meets the “no  
27 fairminded jurist” standard under *Richter*, 131 S. Ct. at 786-87. It does not. The trial error  
28 component of Claim C is denied.

## 2. Claimed Ineffective Assistance of Counsel

The Warden's reliance on the direct appeal opinion for Bolin's ineffective assistance of counsel, however, is not compelling. As habeas corpus necessarily explores matters outside of the trial record, a party's reliance on an appellate decision for a ruling on a claim traditionally raised for the first time on habeas corpus is not always well taken. First and foremost, the factual record on appeal is limited to the trial record. The Court's review of the parties' respective arguments is informed by this fact. The California Supreme Court also acknowledges the limitations of the appellate record:

To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, we will affirm the judgment “unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation . . .”

18 Cal. 4th at 333 (citing *People v. Pope*, 23 Cal. 3d 412, 426 (1979)). As a consequence, and based on properly presented evidentiary submissions to the state court on habeas corpus, significant factual findings relied upon by the Warden in the direct appeal opinion are unsupported. From this determination, it follows that the state court's legal decisions about the merits of Bolin's venue challenge also overstep the bounds of reasonableness under § 2254(d)(1). Finally, addressing the elements of Bolin's ineffective counsel claim, in light of the record and properly presented evidence, the Court determines Bolin has satisfied the stringent AEDPA requirements to proceed with an evidentiary hearing.

**a. Relevant Facts Outside of the Record on Appeal**

There are three categories of evidence that were not before the state court on direct appeal, which the Court is persuaded would have (or should have) influenced the state court's findings, starting with the Community Attitude Survey. Bolin's counsel failed to make this document part of the appellate record. In its direct appeal opinion, the state court found as follows:

Initially, we address defendant's claim counsel was ineffective for failing to make a sufficient record in support of the motion because he failed to have the public opinion survey entered into evidence. We find no deficiency. [Citation.] The trial court had a copy of the survey of its consideration. Counsel orally represented the statistical information he deemed most vital to the motion. Since the prosecutor offered no contradiction, we have concluded those representations were accurate and accepted them as part of the record.

1 18 Cal. 4th at 312. As it turns out, Mr. Soria's representations of the statistical information in the  
 2 survey were not accurate, a fact the Supreme Court could not have known without reviewing it.<sup>24</sup>  
 3 He under-represented the percentage of survey respondents who had watched the *America's Most*  
 4 *Wanted* program as well as the percentage of respondents from that group who favored the death  
 5 penalty for Bolin. From the colloquy at the change of venue motion, it is clear that the trial judge  
 6 also relied on Mr. Soria's under-representations in his lack of enthusiasm for Bolin's argument about  
 7 the detriment occasioned by the pretrial publicity. In light of Mr. Soria's inaccurate representations,  
 8 the state court's complacency in not requesting the document for independent review is unfortunate.

9 The second gap is that the Supreme Court did not have the newspaper clippings repeatedly  
 10 recounting Jim Wilson's harrowing escape over a 14-hour, eight-mile trek, sometimes crawling to  
 11 safety, and the increased law enforcement patrol of the Walker Basin area until Bolin was  
 12 apprehended. These articles also misrepresented as facts that Bolin's marijuana operation had been  
 13 rigged with multiple "booby traps," that authorities discovered four pipe bombs in the cabin, each  
 14 with the fire power equivalent to a hand grenade, that Bolin was a convicted "killer," and a  
 15 connection between Bolin's marijuana operation and other marijuana farms in the Walker Basin area  
 16 discovered by the Kern County SWAT team. The newspaper also reported that Bolin had a prior  
 17 arrest for weapons charges, a fact determined to be not admissible at Bolin's trial (because the trial  
 18 court found that the arresting officer lacked probable cause to search Bolin). Although these  
 19 clippings certainly were mentioned in the appellate proceedings, the state court expressed no interest  
 20 in reviewing them.

21 Third, the California Supreme Court did not have before it the audio-video evidence of  
 22 the television broadcasts, including the *America's Most Wanted* episode, the follow-up episode  
 23 reprising the crime and describing Bolin's apprehension, as well as the news broadcast discussing  
 24 the *America's Most Wanted* program and the interview with Kern County Sheriff Smith. While the  
 25 programs were transcribed into the reporter's transcript, the visual impact of the broadcasts cannot

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 27 <sup>24</sup> As noted in Part VI.A.4., *supra*, although the Warden's attorneys were in possession of the  
 28 survey document, it was not lodged with this Court until after state habeas proceedings terminated.  
 Whether the California Supreme Court ever received a copy of the survey, from either party is simply  
 unknown. What is clear is that the state court knew about it, but never requested to review it.

1 be understated.<sup>25</sup> As Bolin argues, the *Most Wanted* episode included many dramatic features to  
2 make an emotional appeal to the audience, including the tender moment shared by the Mincy  
3 character and his young daughter, the emotionless demeanor of the Bolin character as he shot the  
4 Huffstuttler character, the smirk on the Bolin character’s face as he callously shot the cowering,  
5 pleading Mincy character in cold blood, the many times the Wilson character stumbled, fell,  
6 tumbled, and kept persevering, running and crawling for his life after being shot in the shoulder, and  
7 even the untrue braggadocios representations of the Bolin character that he had been part of the elite  
8 Navy SEALS. In addition, the fact of Steve Mincy’s struggle and triumph over a past drug addiction  
9 and the the clean-cut presentation of Jim Wilson provided a dramatic contrast to the heartless,  
10 survivalist Bolin. The Court notes that no contrary description of the *America’s Most Wanted*  
11 program is offered by the Warden. The Court finds his silence on the characterization of the  
12 *America’s Most Wanted* program is telling. The program was inflammatory and created to excite  
13 public passion against Bolin.

14        Further, the broadcasts repeated the misinformation about “booby traps,” pipe bombs, and  
15 Bolin’s convicted “killer” status. Like the newspaper articles, the program also repeated that Bolin  
16 had been arrested on weapons charges and added that he had stabbed a man 15 times but had been  
17 acquitted. This latter incident, like the weapons charges incident, was the subject of an in limine  
18 motion, which the trial court granted.

**b. Unsupported State Court Factual Findings in Light of Evidentiary Submissions on Habeas Corpus and Record Review**

21 In light of this additional evidence combined with a thorough review of the trial record, this  
22 Court finds that four of the state court's factual conclusions, relied on by the Warden, are  
23 unsubstantiated and erroneous. All four support the state court's conclusion that "Counsel's failure  
24 to renew the change of venue motion did not result from ignorance or inadvertence and reflected a  
25 reasonable trial strategy." 18 Cal. 4th at 314.

<sup>25</sup> Even though the state court had the transcript including these television broadcasts, no summary is of the programs is referenced in the direct appeal opinion.

1       The first is strictly record based. The state court observed that “for the most part few [of the  
 2 prospective jurors] recalled the specifics or had formed a resolute impression of the defendant’s  
 3 guilt.” *Id.* To the contrary, of the 38.6 percent of the jurors individually questioned who had been  
 4 exposed to pretrial publicity (66 out of 171), only eight (of the 38 jurors and prospective jurors who  
 5 actually were questioned about their questionnaire responses as to preconceived guilt<sup>26</sup> had no  
 6 opinion when they entered the courtroom. Sixteen thought Bolin was probably guilty, and fourteen  
 7 thought he was guilty or definitely guilty. The voir dire responses also show that 45 of those 66  
 8 individuals, whether or not exposed to the *America’s Most Wanted* program, had a good to excellent  
 9 recollection of the crime, while only 12 had no or a limited recollection and three had a limited to  
 10 good recollection. Four of the 45 individuals with a good to excellent recollection of the crime were  
 11 selected to serve on the petit jury.<sup>27</sup>

12       The second unsubstantiated finding is that there had been “an 11-month” interval between  
 13 the last media report about the case and the commencement of trial, *id.*, indicating the public interest  
 14 had subsided. This notion is contradicted by anecdotal references to continued media interest in the  
 15 trial record, as stated by the state trial judges. Publicity was prevalent during the preliminary  
 16 examination hearing as a result of the judge granting the request for media presence in the  
 17 courtroom, namely, the *Bakersfield Californian*, radio station KUZZ, and two television stations.  
 18 Ms. Ryals mentioned that jury service would be “fun” because “probably these people know what  
 19 this case is.” Just after the jurors were sworn in, Judge Davis noted that television cameras were set  
 20 up, permanently, in the courtroom to film witness testimony. When Judge Davis described the  
 21 manner in which the jury view of the crime scene would be handled, he told the jurors they would  
 22 “be tailed by a television crew” filming the proceedings. The next day he gave more information  
 23 about being followed by television station personnel, noting that the jury view had “gotten a little  
 24 more complicated and publicized” and that he did not have authority to close down highways to the

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 26       <sup>26</sup> The Court’s only information about how prospective jurors completed the questionnaires  
 27 comes from voir dire testimony.

28       <sup>27</sup> Again, reference to 45 prospective jurors and actual jurors is limited because the remaining  
 19 individuals exposed to publicity were not asked about their level of recollection.

1 crime scene. He admonished jurors to avoid contact with the television personnel, as there were  
2 “going to be television stations following us up and down and all around.” The Court has no way  
3 of knowing whether these anecdotal references to publicity are exhaustive of continued public  
4 interest. No side bar or chambers conferences about continued publicity have been preserved.  
5 Nonetheless, they do demonstrate that media and public interest in the case continued well into the  
6 trial.

7 The next questionable finding by the California Supreme Court is that “counsel could well  
8 have recognized the effect of the publicity had not been as substantial as feared.” *Id.* There are two  
9 components to the erroneousness of this finding. The first is the failure to acknowledge the number  
10 of persons influenced by the publicity, as demonstrated by the Community Attitude Survey and voir  
11 dire. The second is the contradiction between the *supposed* mental state of Messrs. Soria and Cater  
12 and their actual conduct during voir dire. To the state court’s credit, the fact that Messrs. Soria and  
13 Cater exercised only four of Bolin’s 20 peremptory challenges provides support for this finding.  
14 However, the attorneys’ failure to exercise more of Bolin’s peremptory challenges contradicts their  
15 continued and persistent efforts during voir dire to have the trial court excuse prospective jurors  
16 exposed to the *America’s Most Wanted* program. Bolin’s offer of the declarations of both Mr. Soria  
17 and Mr. Cater also flatly contradict the state court’s finding and demonstrates the absence of a  
18 strategic decision about not advancing more of Bolin’s 20 peremptory challenges.<sup>28</sup> Notwithstanding  
19 the attorneys’ failure to exercise more peremptory challenges, as Bolin argues, they never conceded  
20 the propriety of the venue in Kern County, and never abandoned the position that prejudicial media  
21 coverage tainted the jury.

22 The final troublesome finding is the state court’s statement that the *America’s Most Wanted*  
23 program “was relevant only to the guilt phase portion of the trial,” noting that guilt was “virtually  
24 a foregone conclusion.” *Id.* This finding cannot be sustained under any construction of the record.  
25 Courts nationwide reviewing death penalty cases are aware that the “circumstances of the crime” are  
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28 <sup>28</sup> Under *Pinholster*, 131 S. Ct. at 1398, the relevance of these declarations goes to evidence  
to be adduced at the evidentiary hearing, not the reasonableness of the state court’s factual finding.

1 relevant to a jury's consideration of whether to impose the ultimate punishment. Bolin's case is no  
2 different. During penalty phase instructions, the trial judge stated the following:

3 In determining which penalty is to be imposed on this defendant, you shall consider  
4 all of the evidence which has been received during any part of the trial in this case.  
5 [¶] You shall consider, take into account and be guided by the following factors, if  
6 applicable: [¶] A, the circumstances of the crime of which the defendant was  
7 convicted in the present proceeding and the existence of any special circumstance  
8 found to be true. . . .

9 RT-11: 2605. Moreover, after asserting that *America's Most Wanted* was not relevant to the penalty  
10 phase, the state high court then referred back to the circumstances of the crime presented during the  
11 guilt phase, in commenting on the strength of the penalty phase evidence: "In particular, the guilt  
12 phase testimony revealed defendant as a calculating and callous individual, willing to kill defenseless  
13 victims, including his friend and partner Huffstuttler, in cold blood to protect his drug enterprise."  
14 18 Cal. 4th at 341. By the state court's own analysis of penalty phase issues, the dramatization of  
15 Bolin's crime on *America's Most Wanted*, was relevant to both phases of the trial.

16 **c. Controlling Legal Authority for Change of Venue**

17 Turning to the law, the basic and enduring standard for evaluating a change of venue claim  
18 in the face of pretrial publicity is whether there is a "reasonable likelihood that prejudicial news prior  
19 to trial will prevent a fair trial." *Sheppard*, 384 U.S. at 362 (1966). Under California law, as the  
20 Warden points out, the relevant factors for determining whether a venue motion should be granted  
21 are: 1) the extent and kind of publicity; 2) the size of the community in which the crime occurred;  
22 3) the nature and gravity of the crime; and 4) the standing of the victim and accused in the  
23 community. *People v. Martinez*, 29 Cal. 3d 575, 578.

24 The first of these factors, that is, the extent and kind of publicity, determines whether the  
25 prejudice is actual or presumed. To establish actual prejudice, the defendant must demonstrate that  
26 the jurors exhibited actual partiality or hostility that could not be laid aside. *Ainsworth v. Calderon*,  
27 138 F.3d 787, 795 (9th Cir. 1998); *Daniels*, 428 F.3d at 1211. In Bolin's case all of the seated jurors  
28 represented on voir dire that they could set aside whatever preconceived notions they had about his  
guilt as well as recollection of the crime, and consider only evidence presented by the parties at the  
trial itself in rendering a verdict. The California Supreme Court was impressed by this fact in

1 rejecting Bolin's trial error and ineffective counsel claims on direct appeal. *Bolin*, 18 Cal. 4th at 314  
 2 (noting "those who eventually sat on the jury all gave assurances they would decide the case based  
 3 solely on the courtroom evidence"). In light of the assurances of impartiality given by Bolin's  
 4 sitting jurors, the state court's determination that actual prejudice was not established is not  
 5 unreasonable under § 2254(d). *See Richter*, 131 S. Ct. at 786-87. Bolin's reliance on *Patton v.*  
 6 *Yount*, 467 U.S. at 1035 and *Irvin*, 366 U.S. at 727, for the proposition that the jurors demonstrated  
 7 actual prejudice is unpersuasive. Both of those cases involved claims of presumed prejudice such  
 8 that the jurors claims they could be impartial was not believable.

9       Nonetheless, prejudice may be presumed when the record demonstrates that the community  
 10 in which the trial was held was saturated with prejudicial and inflammatory media publicity about  
 11 the crime. *Ainsworth*, 138 F.3d at 795; *Daniels*, 428 F.3d at 1211. As noted by the Warden, and  
 12 relying on *Ainsworth*, 138 F.3d at 795, the factors considered in a presumed prejudice inquiry  
 13 include the existence of a "barrage of inflammatory publicity immediately prior to trial amounting  
 14 to a huge [ ] wave of public passion" *id.* (citing *Patton v. Yount*, 467 U.S. at 1033), an assessment  
 15 of whether media accounts consisted primarily factual material as opposed to inflammatory  
 16 editorials, *id.* (citing *Harris*, 885 F.2d at 1362), and an evaluation of whether the media account  
 17 contained inflammatory, prejudicial information that was not admissible at trial, *id.* (citing *Sheppard*,  
 18 384 U.S. 360-61). Even in circumstances where assurances of impartiality are given, the prejudice  
 19 inquiry examines jury voir dire to determine if, notwithstanding jurors' assurances of impartiality,  
 20 the record compels an inference that the jurors were not impartial. *Murphy*, 421 U.S. at 799-803.  
 21 Looking at each of the factors informing the presumed prejudice inquiry, the Court concludes Bolin  
 22 has made a *prima facie* case that presumed prejudice existed and that juror assurances of impartiality  
 23 should not have been credited.

24       Whether there was a barrage of inflammatory publicity immediately prior to the trial

25       The media attention surrounding Bolin's case commenced the day after authorities discovered  
 26 the bodies of Steve Mincy and Vance Huffstuttler, with several successive articles in the *Bakersfield*  
 27 *Californian*, and continued at least through the guilt phase trial, with cameras permanently set up in  
 28 the courtroom. The peak of the potentially inflammatory publicity occurred in January 1990, just

1 before and after the *America's Most Wanted* episode and follow-up segment about Bolin's case were  
2 broadcast. Because the record has been poorly preserved on the issue of continuing media interest,  
3 however, the Court cannot say that passion against Bolin reflected in the specific publicity reviewed  
4 in Part VI.A.1., *supra*, was perpetuated after the preliminary examination. Anecdotal evidence about  
5 media interest in the actual trial proceedings mentioned by Judge Davis in connection with the jury  
6 view, however, does indicate that considerable interest in Bolin's case was sustained in Kern County.  
7 Notably, the presence of television cameras permanently set up in the courtroom, Ms. Ryals  
8 comment that people would think serving on Bolin's jury would be "fun" because they knew about  
9 the case, that television personnel would be "tailing" jurors up and down the mountain during the  
10 jury view, and that two public school teachers brought their classes to observe the trial proceedings.

11 Whether the media accounts were primarily factual

12 While the publicity about Bolin's case did factually report the two homicides, the attempted  
13 homicide,<sup>29</sup> and the marijuana cultivation, there were numerous references to non-facts. Included  
14 in this category are:

- 15 1) That Bolin previously had been convicted of voluntary manslaughter (or that Bolin  
16 already was a convicted "killer"), when in fact his prior conviction was for attempted  
17 manslaughter;
- 18 2) That Bolin and his companion (referencing Ramirez) likely were armed with unspecified  
19 weapons, including pipe bombs;
- 20 3) That the property was rigged with multiple booby traps;
- 21 4) That four pipe bombs were discovered in the cabin, each with the fire power equivalent  
22 to a hand grenade; and
- 23 5) That Bolin's marijuana operation was connected with other marijuana cultivation projects  
24 located in the Walker Basin area.

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26 //

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28 <sup>29</sup> The homicides consistently were characterized as "murder."

1        Whether prejudicial material was published that was not admissible at trial

2        This category is comprised of repeated references to Bolin's prior arrest for possession of a  
3 sub-machine gun (which turned out to be a semi-automatic gun) suppressed following a defense in  
4 limine motion, his acquittal for stabbing of a man 15 times on the grounds of self-defense (which  
5 didn't result in a death), also suppressed following a defense in limine motion, and the discovery of  
6 other marijuana cultivation projects located in the Walker Basin area suggested to have been  
7 connected to Bolin. The Court also is mindful of the introduction of evidence about the discovery  
8 of three pipes and a cannister of gun powder in the cabin during guilt phase proceedings, which  
9 could have been suppressed on a defense limine motion if Bolin's attorneys had made the motion.  
10 Defense counsel could have argued that under the required analysis of California Evidence Code  
11 section 352, this evidence was irrelevant to the murder and attempt murder charges while only  
12 marginally relevant to the marijuana cultivation charge, and highly prejudicial.

13                    **d.        Application of Ineffective Assistance of Counsel Standards**

14        The foregoing analysis reveals the Court's impression of the trial attorneys' deficient  
15 representation. After conducting voir dire over a period of nearly four weeks (from November 5,  
16 1990, through December 3, 1990, with Fridays and Thanksgiving off), the prospective jurors  
17 examined demonstrated familiarity with the case and definite opinions about Bolin's guilt. While  
18 many prospective jurors were excused because they admitted they could not set aside the pre-existing  
19 opinions, many others who had (respective) accurate recollections of the facts and voiced definite  
20 opinions about Bolin's guilt remained, and Bolin's attorneys persisted in their unsuccessful efforts  
21 to have individuals who had watched the *America's Most Wanted* program excused. In light of the  
22 continuing public and media interest in the case up to jury selection and through guilt phase  
23 proceedings, the inflammatory nature of both the broadcast and printed media information published  
24 in Kern County, together with the attorneys' continued cause challenges, their failure to renew the  
25 venue motion when clearly offered that opportunity by the trial judge was deficient.

26        In light of the unsupported factual conclusions recited in the appellate decision, the California  
27 Supreme Court's contrary conclusion cannot withstand scrutiny under § 2254(d)(1) applying the  
28 fairminded jurist standard set out in *Richter*, 131 S. Ct. at 786-87. Nor is the determination of the

1 state court that Bolin's corresponding state habeas claim failed to state a *prima facie* case reasonable  
2 under the applicable federal standards. As explained in Part II, *supra*, the pleading requirements for  
3 state habeas petitions are similar to those for federal habeas. Under *Duvall*, 9 Cal. 4th at 474, state  
4 habeas petitioners are expected to "state fully and with particularity the facts on which relief is  
5 sought," and in addition, "include copies of reasonably available documentary evidence supporting  
6 the claim, including pertinent portions of the trial transcripts and affidavits or declarations." The  
7 California Supreme Court's summary denial of state claim B4 (the state petition version of federal  
8 Claim C), signals the state court finding that even if the Bolin's allegations had been accepted as  
9 true, he failed to state a *prima facie* case. To the contrary Bolin did state fully and with particularity  
10 the facts supporting his contentions of deficient performance by Messrs. Soria and Cater in both his  
11 state and federal petitions.

12 Addressing the prejudice component, the Warden offers three out of circuit cases and one  
13 pre-AEDPA case from this district, for the proposition that even if Bolin's trial attorneys had  
14 renewed the venue motion, it would not have been granted. *See Meeks*, 216 F.3d at 961 (from the  
15 Eleventh Circuit); *Heath*, 941 F.2d at 1136 (also from the Eleventh Circuit); *Braun*, 190 F.3d at 1189  
16 (from the Tenth Circuit); *Williams*, 817 F. Supp at 1477 (from the Eastern District of California).  
17 The last two of these cases additionally state that the respective petitioners failed to show there was  
18 a reasonable probability of a different outcome in the trial proceedings, even if a motion for change  
19 of venue had been granted. *Braun*, 190 F.3d at 1189 and *Williams*, 817 F. Supp. at 477. Under  
20 current controlling authority, however, this later requirement is not properly part of the prejudice  
21 showing. Rather, Bolin is required only to demonstrate that had his attorneys renewed the venue  
22 motion it would have (or should have) been granted. *See Styers v. Schriro*, 547 F.3d 1026, 1030  
23 (9th Cir. 2008) (involving a claim for ineffective assistance counsel for the trial attorney's failure  
24 to move to strike the entire jury panel because of exposure to prejudicial publicity). The court  
25 explained in a footnote that because Styers' motion to strike the panel "directly implicate[d] the  
26 impartiality of the jury itself [ ], no such additional or separate showing of prejudice would appear  
27 necessary." *Id.* at 1030, n. 5 (citing *Dyer v. Calderon*, 151 F.3d 970, 973, n. 2 (9<sup>th</sup> Cir. 1998)  
28 (holding conviction obtained from a jury comprised of even one biased member requires automatic

1 reversal). This principle also is followed in the Fifth and Sixth Circuits. *See Virgil v. Dretke*, 446  
2 F.3d 598, 607 (5th Cir. 2006); *Quintero v. Bell*, 368 F.3d 892 (6th Cir. 2004) *reinstating after*  
3 *remand*, *Quintero v. Bell*, 256 F.3d 409, 413-15 (6th Cir. 2001). Since Bolin’s ineffective counsel  
4 claim for his attorneys’ failure to renew the venue motion also implicates the impartiality of the jury,  
5 the Court applies the same principle stated by the Ninth Circuit in *Styers*, 547 F.3d at 1030.

6 In the direct appeal opinion, the California Supreme Court concluded that a “renewed effort  
7 to seek a change of venue would [have been] futile since the trial court had conditioned any change  
8 in its tentative ruling on a determination the television coverage had impaired the ability to assemble  
9 an impartial jury.” 18 Cal. 4th at 314. In drawing this conclusion, the state court relied on its finding  
10 that few prospective jurors recalled specifics of the *America’s Most Wanted* program or had formed  
11 “a resolute impression” of Bolin’s guilt, that all seated jurors gave assurances of impartiality, and  
12 that exposure to the publicity “was relevant only to the guilt phase portion of the trial,” which was  
13 “virtually a foregone conclusion.” *Id.* Given the state court’s mistaken view about the number of  
14 prospective and actual jurors who accurately recalled the specifics of the publicity accounts and had  
15 formed opinions about Bolin’s guilt in advance of voir dire, as well as the court’s erroneous  
16 statement that the publicity was relevant only to guilt phase proceedings, this Court finds the  
17 conclusion unreasonable under § 2254(d)(1), applying the fairminded jurist standard under *Richter*,  
18 131 S. Ct. at 786-87. Contrary to the state court’s conclusion and the Warden’s argument, the  
19 atmosphere surrounding Bolin’s trial was not benign. As noted above, the Warden does not describe  
20 the character of the *America’s Most Wanted* program or any of the publicity, but rather minimizes  
21 the impact of the publicity, emphasizing how few actual jurors remembered details of the crime and  
22 that all jurors promised to be impartial. His argument is unsupported by the record. While the Court  
23 does not conclude that the continued presence of media equipment in the courtroom during trial  
24 created a “carnival atmosphere,” *Sheppard*, 384 U.S. at 358, with so many jurors familiar with the  
25 details of the case and having pre-voir dire opinions about his guilt, together with continued media  
26 and public interest in the case, the Court is persuaded that Bolin has demonstrated a colorable claim  
27 that the atmosphere was inherently prejudicial and that the wave of public passion had not subsided.  
28

1       Turning to the state habeas summary denial, the Court again addresses whether the state  
 2 petition allegations reached the threshold of a *prima facie* case so as to warrant the state court's  
 3 issuing an order to show cause and conducting an evidentiary hearing. *See Duvall*, 9 Cal. 4th at 474-  
 4 75. In assessing the three factors identified in *Ainsworth*, 138 F.3d at 795, and *Daniels*, 428 F.3d  
 5 at 1211, for determining the whether lack of impartiality may be presumed, the Court is informed  
 6 by the *Styers* case<sup>30</sup> where the Ninth Circuit upheld denial of *Styers*' claim. 547 F.3d at 1032-33.

7       In *Styers*, the Ninth Circuit primarily relied on *Patton v. Yount*, 467 U.S. 1025, and *Mu'Min*,  
 8 500 U.S. 415. Contrasting the facts of *Styers*' case with those of the *Yount* and *Mu'Min*, the court  
 9 noted none of the prior articles reported *Styers* had confessed or mentioned his prior criminal history.  
 10 Next, although the articles did publish statements made by a co-defendant about *Styers*, and those  
 11 statements were not admitted at *Styers*' trial, evidence that was admitted at trial was similar and even  
 12 more damaging than the published statements of the co-defendant. *Id.* at 1032. Finally, there was  
 13 a break in the articles. In the month after the young victim was discovered there were 25 articles  
 14 published about the crime. In the ensuing eight months, there were only seven articles, followed by  
 15 26 articles the month one of the co-defendants was tried. The court pointed out, however, that the  
 16 articles published during the co-defendant's trial "were virtually all factual accounts of her trial  
 17 proceedings, rather than opinion pieces containing inflammatory rhetoric." *Id.* at 1029, 1032.

18       The facts in the *Styers* case are distinguishable. In *Bolin*'s case, from the time of the  
 19 *America's Most Wanted* episode was broadcast on January 7, 1990, there was no break in the  
 20 publicity in *Bolin*'s case all the way through, at least, the guilt phase proceedings. Nor was the  
 21 publicity primarily factual and confined solely to information admissible at trial. As pointed out in  
 22 Part VI.D.2.c., *supra*, *Bolin* was identified as a convicted killer throughout the pre-arrest and pretrial  
 23 periods who had prior weapons charges and had stabbed a man 15 times. Moreover, his status as  
 24 a "convicted killer" remained a *fact* in the trial proceedings until just before the penalty phase, when  
 25 the trial judge was preparing to read the information (including the prior convictions) to the jury.

27       <sup>30</sup> The facts of this case are disturbing, involving the murder of the four-year old son of James  
 28 *Styers*' co-defendant, Debra Milke, because the child allegedly was "too much trouble." 547 F.3d  
 at 1029.

1 *See* Part VI.A.2.b., *supra*. The other two incidents were excluded prior to the penalty phase  
2 following defense in limine motions. Early articles published by the *Bakersfield Californian* also  
3 reported that Bolin and Ramirez likely were armed with unspecified weapons, including pipe bombs,  
4 that the property was rigged with multiple booby traps, and that Bolin's marijuana operation was  
5 connected with other marijuana cultivation projects in the Walker Basin area. None of these reports  
6 were in any way substantiated. Continued and repeated reports that four *actual* pipe bombs, each  
7 with the fire power of a hand grenade, were discovered at the property also were unsubstantiated.

8 The most distinctive departure in publicity between Bolin's case and all the other cases,  
9 including *Styers*, 547 F.3d 1026, *Daniels*, 428 F.3d 1181, *Ainsworth*, 138 F.3d 787, as well as the  
10 Supreme Court cases, *Mu 'Min*, 500 U.S. 415, *Patton v. Yount*, 467 U.S. 1025, and *Murphy*, 421 U.S.  
11 794, is that Bolin's crime was featured on an dramatization of *America's Most Wanted*. Having  
12 reviewed the broadcast of this program, as well as the follow-up episode and the local news report,  
13 the Court is persuaded that Bolin's has presented a colorable claim his jury was not impartial,  
14 notwithstanding assurances to the contrary. As Judge Davis stated, it is far from clear that "the  
15 average person viewing this particular program . . . psychologically would] be able to [put it out of  
16 his or her mind if selected as a juror]. It's quite dramatic." *See* Part VI.A.5., *supra*. This sentiment  
17 also was echoed by a prospective juror<sup>31</sup> before being excused for lack of impartiality about the  
18 publicity in general. He told the judge and parties that Bolin would have to live with the fact that  
19 people in Kern County would be familiar with the crime,

20 unless you go out of town because I can't imagine very many people here in Kern  
21 County that didn't follow that closely because it was kind of pushed in the news  
22 programs prior to it being aired, and more than once, so people were kind of  
23 watching for it just because it dealt with Bakersfield and Kern County.

24 RT-5: 1062.

25 The only remaining issue relevant to Bolin's request for an evidentiary hearing is satisfaction  
26 of the diligence requirements under § 2254(e)(2). The Court finds that given the procedural history

27 28 <sup>31</sup> This prospective juror was Hal Hannah. He was excused on a defense cause challenge  
because he had misgivings about whether he could remain neutral about Bolin's guilt after being  
exposed to publicity. *See* Appendix V, Part One, 38.

1 of the case, including abandonment of Bolin's case by original state-appointed attorney Richard  
2 Gilman, the entry of two orders of equitable tolling of the limitations period while federal counsel  
3 developed federal claims to be presented in the state *and* federal petitions (Doc. 71 and Doc. 85), and  
4 the approval of a case management plan and budget to fund the investigation, it would be anomalous  
5 for the Court now to find Bolin's attorneys were not diligent. Prior federal counsel Jolie Lipsig and  
6 Gary Wells exercised great persistence and diligence investigating Bolin's federal claims and  
7 presenting them before the limitations period expired. The controlling Supreme Court case on the  
8 issue of diligence, *(Michael) Williams*, 529 U.S. 423, unquestionably supports this finding.  
9 Diligence under § 2254(e)(2) is satisfied when the petitioner seeks an evidentiary hearing in state  
10 court, as Bolin did, and the state denies the request, as the California Supreme Court did here. *Id.*  
11 at 437.

12 Bolin's request for an evidentiary hearing as to Claim C is granted with respect to his trial  
13 attorneys' failure to renew their request for a change of venue on the basis of presumed prejudice  
14 occasioned by pretrial publicity. The trial error component of Claim C as well as the argument that  
15 juror impartiality followed from *actual* prejudice, however, are denied on the merits.

16 **VII. Scope of the Evidentiary Hearing**

17 The Court anticipates Bolin will present evidence consistent with his offers of proof, namely  
18 the 1989 ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases,  
19 the 1987 National Legal Aid and Defender Association (NLADA) Standards for the Appointment  
20 of Counsel in Death Penalty Cases, excerpts from the California Death Penalty Defense Manual  
21 (1986 through 1989) regarding jury selection as well as pretrial motions for change of venue, the  
22 declaration of *Strickland* expert, James S. Thomson, the declaration of Mr. Soria, and the declaration  
23 of Mr. Cater. Exhibits 57, 58, 59, 60, 72, 65,<sup>32</sup> and 66, respectively. The Court cautions Bolin that  
24 ABA standards are only guides which inform reasonable attorney conduct, not "inexorable  
25 commands." *Van Hook*, 558 U.S. at \_\_\_, 130 S. Ct. at 17; *Padilla*, 130 S. Ct. at 1482. The Court  
26 further reminds Bolin that in the March 9, 2012 order, the proffered declarations of his trial counsel  
27

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28 <sup>32</sup> As redacted in the March 9, 2012 order.

1 and Mr. Thomson were found not to relay privileged attorney work product or attorney-client  
2 communications, except as determined in the order, and will not be eligible for a protective order  
3 under *Bittaker v. Woodford*, 331 F.3d 715, 718-26 (9th Cir. 2003) in any ensuing state proceedings.  
4 Except for juror questionnaire responses, the Court does not anticipate that Bolin will present any  
5 additional evidence beyond that proffered. The Court also anticipates that the Warden may wish to  
6 present his own evidence on the issue of whether trial counsel were constitutionally ineffective.

7 The Court will consider evidence presented by way of stipulation, record expansion, and  
8 testimony to determine whether the allegations presented are, in fact, established. The parties are  
9 directed to meet and confer and thereafter file a joint statement on or before May 30, 2012, setting  
10 forth their respective preparations for the hearing, including witnesses to be called, documentary  
11 evidence to be introduced, pre-hearing discovery to be conducted, several proposed dates for the  
12 evidentiary hearing, and a realistic, efficient time estimate. If the estimate is not reasonable the  
13 Court will set it for counsel.

14 **VIII. Order**

15 Having considered Claim C of Bolin's Petition, the Court orders an evidentiary hearing to  
16 be conducted as to the ineffective assistance of counsel portion of the claim, consistent with the  
17 foregoing analysis. That portion of Claim C addressing trial error is denied on the merits.

18  
19 DATE: April 26, 2012

20 \_\_\_\_\_/s/ Lawrence J. O'Neill  
21 Lawrence J. O'Neill  
22 United States District Judge  
23  
24  
25  
26  
27  
28

1 APPENDIX I  
2

3 Summary of Newspaper Articles from the *Bakersfield Californian*  
4

5 Exhibit 53 (which was Exhibit A to Bolin's October 22, 1990, motion to change venue)<sup>33</sup>  
6

7 September 4, 1989  
8

9 Entitled, "Armed pair sought in deaths," this article states that "sheriff's deputies are looking  
10 for two 'armed and extremely dangerous' suspects . . . after a grisly discovery in a remote marijuana  
11 plantation in the mountains east of Bakersfield." The article incorrectly reports that the suspects  
12 "had multiple bobby traps set up there" and that authorities had to have "explosive experts come up  
13 and disarm them." The article reports that the two suspects "may be in possession of pipe bombs  
14 and numerous other unknown type weapons." One of the suspects, identified as "Paul" (i.e., Bolin)  
15 "was described as a former member of the Navy's elite SEALS explosives and commando unit."<sup>34</sup>  
16 The surviving victim, Jim Wilson, was reported as having been wounded, but escaped after hiking  
17 all night in the hills above Walker Basin and then getting help.  
18

19 September 6, 1989  
20

21 Entitled, "Man arrested in slaying of 2," this article reports that Juan Eloy Ramirez has been  
22 arrested but that Bolin, "a convicted killer and reported former member of the Navy SEALS  
23 commando and explosives unit" is still being hunted. The article repeats that Bolin had been  
24 convicted of a homicide, namely manslaughter, for which he served almost two years in prison. This  
25 information reportedly came from the State Department of Corrections.<sup>35</sup> While acknowledging that  
26

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27 <sup>33</sup> The exhibits to Bolin's trial venue motion were not made part of the appellate record,  
28 though the venue motion was prominently argued before the California Supreme Court.

29 <sup>34</sup> Investigating Deputy Martin Williamson reported that on September 6, 1989, he telephoned  
30 the SEAL training school and spoke with the commanding master chief, who advised Deputy  
31 Williamson that Bolin had never been through SEAL training either on the east coast or west coast.  
32 Exhibit 6: 32

33 <sup>35</sup> In fact, the information was incorrect. Bolin previously had been convicted of attempted  
34 manslaughter. There had been no death.

1 Pentagon officials had not confirmed it, the article reiterates that law enforcement broadcasts  
2 described Bolin as a former member of the Navy's elite SEALS and an explosives expert." The  
3 article then assures: "Until Bolin is found, [ ] an additional deputy and the sheriff's helicopter have  
4 been assigned to patrol the Walker Basin and Thompson Canyon areas where the pot farm was  
5 located." Surviving victim Jim Wilson's 12 hour hike to safety after being shot in the shoulder is  
6 again recounted. Bolin is said to have shot the three young men after becoming furious that the one  
7 victim with whom he was associated had invited the other two to see the marijuana operation. Next,  
8 a sheriff's department explosives specialist is quoted reporting that four pipe bombs had been  
9 confiscated from the cabin, the largest of which was two inches in diameter and measured a foot  
10 long, with equivalent "fire power" to a hand grenade. Although the specialist stated these pipe  
11 bombs, which had not been activated, "were not set up as booby traps per se [ ] they had the potential  
12 to do so." The specialist further is quoted as saying that it is not uncommon for marijuana farmers  
13 to set up "booby traps" to protect unattended fields.

14 Finally the article mentions another marijuana farm uncovered over four years earlier nearby  
15 at which a Kern County sheriff deputy was shot.

16

17 September 7, 1989

18 Entitled, "Murder suspect once convicted in shooting," this report identifies the victims of  
19 the homicides, refers to Bolin as a fugitive, and describes an earlier shooting of Kenneth Ross, with  
20 a shotgun, during an altercation involving Bolin's God-daughter. The article then stated Bolin was  
21 convicted of manslaughter for this shooting.<sup>36</sup> The motive for shooting the victims is attributed to  
22 Bolin's having become furious that the victim with whom he was acquainted brought the other two  
23 to see the marijuana. The article states that a .45 caliber handgun believed have been used in the  
24 homicides was recovered from the scene as well as shotguns, four pipe bombs, and 300 marijuana

25

26

27

28

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<sup>36</sup> The conviction was for attempted manslaughter, not manslaughter. The weapon used was a rifle, not a shotgun.

1 plants.<sup>37</sup> With respect to Bolin's stated connection with the Navy SEALs, this article reports that  
2 authorities had not been able to confirm Bolin's military record.<sup>38</sup>

3

4 September 8, 1989

5 Entitled, "Deputies discover 2nd pot farm," this article oscillates from a description of a  
6 second marijuana farm operation in the hills near the crime scene, to the continued pursuit of Bolin,  
7 to the mission of a SWAT team at a trailer found in a remote canyon off a nearby road because a  
8 vehicle registered to Bolin's wife was found near the trailer. The article draws a vague connection  
9 between recovery of an automobile stolen from the Los Angeles area near the second marijuana farm  
10 and Bolin, since Bolin was thought to be in Los Angeles.

11

12 September 9, 1989

13 Entitled, "Murder suspect's empty van found," this article first mentions the recovery of  
14 Bolin's Ford van in Covina, then reiterates the identities of the victims and the fact that the  
15 homicides took place on Bolin's "marijuana plantation." The article then mentions the two pieces  
16 of information unrelated to the homicides, namely the discovery of a second marijuana farm and  
17 separate discovery of a car registered to Bolin's wife in another area of the Kern County mountains.  
18 The article closes with the assurance that "patrols in the Walker Basin area have been increased after  
19 a resident reported seeing a man he believed could be Bolin hiking in the hills," since "possible  
20 sightings of the fugitive" had been reported.

21

22 January 6, 1990

23 Entitled, "Show to open national hunt for killer of 2," this article advertises the showing of  
24 *America's Most Wanted* the following evening at 9 p.m. about Jim Wilson's "brush with death when  
25 "America's Most Wanted" airs its story on the shootings and encourages viewers to call in with leads

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26

27 <sup>37</sup> In fact, only one shotgun was found and there were no ready-to-use pipe bombs.

28 <sup>38</sup> By this time, however, Kern County authorities *had* confirmed that Bolin had never been  
a Navy SEAL.

1 to Bolin's whereabouts." The article opens with information that Kern County homicide detectives  
2 turned to "the syndicated crime re-enactment show" for help finding Bolin after four months of dead-  
3 end leads. Wilson is reported to have "crawled eight miles to reach the closest house" after having  
4 been shot in the shoulder and that his journey to safety took him 14 hours. A reporter for the  
5 program is quoted as saying "We give national exposure to a fugitive story. . . . We try to pick the  
6 ones who are the biggest threats to society." Detective Williamson is credited with stating that Bolin  
7 "likes to describe himself as a survivalist and a former member of the Navy SEALS specialized  
8 team," when he in fact was "neither." Williamson referred to Bolin's "macho image" as a ploy to  
9 impress those he encountered. The article recounts:

10 Bolin does have a violent criminal history [ ]. Five years ago, he was released from  
11 prison after serving a Los Angeles county sentence for manslaughter, and had been  
12 arrested on other weapons charges before that. [¶] When deputies arrived at the ranch  
13 after Wilson's escape, they discovered four pipe bombs, each with the explosive  
14 power of a hand grenade, inside the 20-by-20 foot cabin, which officials think were  
15 to be used as booby traps.[<sup>39</sup>]

16 January 8, 1990

17 Entitled, "Fugitive reportedly nabbed," this brief article recounts that Bolin was arrested 33  
18 minutes after the airing of the *America's Most Wanted* program on Sunday, January 7, 1990. The  
19 article repeats that after Wilson had been shot in the shoulder, he "crawled eight miles to reach the  
20 closest house," and that his journey took 14 hours.

21 Undated, post-January 7, 1990 Arrest

22 This letter to the editor, entitled "Actor appreciates deputies [sic] assistance," is authored by  
23 the *America's Most Wanted* actor who played the role of Eloy Ramirez. The actor gives praise and  
24 validation to the work of the Kern County authorities working on the case and expresses gratitude  
25 that Bolin was apprehended so expeditiously after the airing of the program.

26  
27 <sup>39</sup> As noted above, Bolin was convicted of attempted manslaughter rather than actual  
28 manslaughter, there were only three, rather than four pipes, none of them were loaded with gun  
powder, and they had not been used as booby traps.

1 January 17, 1990

2 Entitled, "Double-murder suspect logs 4 innocent pleas," this article reports the four charges  
3 filed against Bolin, that is, two counts of murder, one count of attempted murder, and one count of  
4 cultivating marijuana, and the fact that Bolin pleaded "innocent" to these charges. The article also  
5 identifies Bolin's appointed attorneys, Charles J. Soria and George Peterson. The article reiterates  
6 previously reported information, namely that "the fugitive was nabbed by officials in Illinois on Jan.  
7 less than an hour after the television broadcast of 'America's Most Wanted,'" that Kern County  
8 authorities had been "tracking Bolin" since learning of the crime from "badly wounded Los Angeles-  
9 area man" (Jim Wilson), that Wilson crawled eight miles over 14 hours to safety after having been  
10 shot in the shoulder, that authorities turned to the syndicated crime re-enactment show for help in  
11 finding Bolin, that Bolin and Huffstuttler had been growing 300 marijuana plants at the crime scene,  
12 and that authorities discovered at the cabin "four pipe bombs, each with the explosive power of a  
13 hand grenade . . . officials think were to be used as booby traps."

14

15 January 27, 1990

16 Entitled, "Defendant's hearing delayed," this article reports that Bolin's preliminary  
17 examination hearing was delayed until March 2, 1990, reiterating that he was charged in the killing  
18 of two men at "the site of a marijuana plantation he allegedly operated," and that Wilson crawled  
19 eight miles over 14 hours to safety after having been shot in the shoulder.

20

21 March 3, 1990

22 Entitled, "Bail denied, Bolin to stand trial in marijuana fields killings," this article gives an  
23 account of Bolin's preliminary examination hearing, namely that Jim Wilson testified the last time  
24 he saw Bolin was when he (Bolin) shot him (Wilson), Bolin was held to answer for all charges and  
25 remanded into custody without bail, and that Bolin's counsel had asked for the preliminary  
26 examination hearing to be closed to the public and the transcript sealed, but that this request was

1 denied, except that the defense motion would be maintained under seal.<sup>40</sup> The article reported the  
2 testimony of both Wilson and Eloy Ramirez that Bolin was very agitated with and shot Huffstuttler  
3 after an argument over Huffstuttler's act of showing Mincy and Wilson the marijuana plants he and  
4 Bolin were cultivating. Wilson reportedly testified that after being shot, he continued running, but  
5 heard six more gunshots and Mincy begging for his life. His trek to safety the next day took 14  
6 hours.

1 APPENDIX II

2 Summary of *America's Most Wanted* Program Regarding Bolin's Case, Sunday, January 7, 1990,  
3 Segment 1 of Exhibit 54 (which was presented as Exhibit B  
4 to Bolin's October 22, 1990, motion to change venue)<sup>41</sup>

5 The program begins with the narrator, standing in what appears to be a newsroom,  
6 introducing the subject of what happened referring to statements attributable to Drug Enforcement  
7 Agents: "Drug Enforcement Agents say marijuana growers will stop at nothing to protect their illegal  
8 marijuana crops. Booby traps, land mines, bungee sticks, it could be deadly for anyone who wanders  
9 too close. That's what happened to a young man from California."<sup>42</sup>

10 The first scene shows the Wilson character, a clean cut, healthy looking, athletic young man,  
11 riding his mountain bike, enjoying the fresh air. Over this scene, the real Wilson explains to an  
12 interviewer that his purpose in going to the Kern County mountains that weekend was to enjoy  
13 mountain bike riding in the fresh air. The Wilson character is then seen riding into Twin Oaks and  
14 meets up with Steve Mincy. Over this scene, the real Wilson relays that Mincy was his best friend  
15 since they were five years old, and that the Mincy family was his second family. The Wilson and  
16 Mincy characters then meet with Vance Huffstuttler who was an old friend of Mincy's.<sup>43</sup> *Huffstuttler*  
17 appears drinking beer near a van along with *Paul Bolin* and *Eloy Ramirez*. The narrator informs the  
18 audience that while Wilson had met Huffstuttler previously, neither Bolin nor Ramirez were familiar  
19 to him.

20 Upon being introduced to *Mincy* and *Wilson*, *Bolin* asks *Wilson* if he (*Wilson*) was in the  
21 service; *Wilson* replies he had been in the Navy. *Bolin* then tells *Wilson* that he (*Bolin*) is an ex-Navy  
22 SEAL and killed his "first man" when *Wilson* was still in diapers. *Wilson* grimaces at this. The

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23  
24 <sup>41</sup> The exhibits to Bolin's trial venue motion were not made part of the appellate record,  
though the venue motion was prominently argued before the California Supreme Court.

25  
26 <sup>42</sup> The audio DVD of the program presented (Exhibit 54) is somewhat garbled at the very  
beginning. The entire program was transcribed by the trial court reporter at the change of venue  
27 motion hearing. RT-II: 9-16. This opening quote is taken from the transcript.

28 <sup>43</sup> *Italics* will be used to refer to the actors who are portraying *Wilson*, *Huffstuttler*, *Mincy*,  
*Ramirez*, and *Bolin*.

1 others present, *Huffstuttler, Ramirez, Bolin*, and *Mincy* all reassure *Wilson* that *Bolin* was just being  
 2 funny and “pulling [*Wilson*’s] chain.” *Ramirez* is shown to be friendly and conversing with the  
 3 others.<sup>44</sup>

4 The program then cuts back to the real *Wilson* talking to an interviewer. He states his  
 5 observation that *Bolin* wanted to project himself as a “tough guy.” Back to the dramatization, *Wilson*  
 6 then takes off from *Bolin, Ramirez, Mincy, Huffstuttler* group to do some more mountain bike riding.  
 7 *Mincy* reminds *Wilson* about the dance that night.

8 *Wilson* is next seen at the *Mincy* family campsite in Walker Basin, which, according to the  
 9 narrator, is at 4:30 in the afternoon. As soon as *Wilson* arrives, *Huffstuttler* asks *Wilson* to give him  
 10 (*Huffstuttler*) a ride. *Mincy* comments that he was supposed to have given *Huffstuttler* a ride to the  
 11 “*Bolin* cabin,” but had a “couple too many” beers. *Wilson* asks to rest a bit, being tired out from his  
 12 mountain bike riding.

13 The narrator then reports that both *Mincy* and *Huffstuttler* had a history of drug abuse. While  
 14 *Mincy* had worked hard to put his drug use behind him, *Mincy*’s father reportedly was not convinced  
 15 that *Huffstuttler* had done so. The *Mincy* father character stares disapprovingly at *Huffstuttler*.  
 16 *Mincy* then tells his father that he (*Mincy*) and *Wilson* will take *Huffstuttler* home and then be “right  
 17 back.” The father character agrees and admonishes *Mincy* “Don’t be long, son,” and then looks  
 18 disapprovingly, again, at *Huffstuttler*.

19 Still at the campsite, a little blonde girl approaches *Mincy* and asks, “Daddy, can I go?”  
 20 *Mincy* responds she cannot go with them, but that he’ll be “right back.” He tells the child that they  
 21 will go to the dance that night where she will wear her new shoes and “dance [her] feet off.”  
 22 *Mincy* then tenderly kisses the little girl.

23 The scene switches to the pickup truck on a dirt road. The narrator explains that it was “an  
 24 hour’s drive up steep mountain trails to reach Thompson Canyon where Vance *Huffstuttler* and Paul  
 25 *Bolin* were living in a ramshackle cabin.” Aerial footage of the rugged Kern County mountains is  
 26 shown. The real *Wilson*’s voice then reports that he wasn’t that surprised or concerned about the  
 27

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28 <sup>44</sup> In his trial testimony, *Ramirez* explained that during this conversation, he was off to the side by himself. He was not engaged in or eavesdropping on the conversation. RT-8: 1943-44.

1 remoteness of the cabin location. This statement is juxtaposed with Wilson next statement that he  
2 “couldn’t even imagine what was going to happen.”

3 The pickup truck is seen parking right in front of the small cabin. *Bolin* is standing in the  
4 doorway; *Ramirez* is sitting in a chair right next to the front door. As the doors to the pickup truck  
5 swing open, *Ramirez* stands up and *Bolin* walks out of the cabin to greet the three young men.  
6 *Wilson* is seen bending over to pet a German Shepherd dog, which barks at him. The dog is tied to  
7 a stake near the front entrance to the cabin. *Bolin* cautions *Wilson* that the dog is mean and might  
8 bite *Wilson*. In the meantime, *Huffstuttler* is beckoning *Mincy* and *Wilson* up an incline just behind  
9 the cabin and then down a hill behind the cabin to show them the marijuana plants growing there.  
10 The plants are full, healthy-looking, taller than the young men. *Huffstuttler* is heard telling *Mincy*  
11 and *Wilson* that this crop of marijuana is going to make him “some money.”

12 The program cuts back to the real *Wilson* telling the interviewer that this was the most pot  
13 he had ever seen in his life and even though it “wasn’t a hefty plantation, it was quite a bit of pot.”  
14 As the scene switches back to the dramatization, the real *Wilson*’s voice continues that *Huffstuttler*  
15 explained the various kind of marijuana plants he and *Bolin* were growing. *Wilson* is seen seriously  
16 regarding the plants. It is apparent that the marijuana plants are contained in large planting  
17 containers. At this point, he narrator states that this marijuana crop was worth more than \$300,000,  
18 according to Kern County deputies , which was “a secret, they say Paul *Bolin* was determined to  
19 keep.” As the narrator completes this sentence, the scene cuts to *Bolin*’s legs walking quickly down  
20 the hill. *Bolin* then confronts *Huffstuttler* and his companions.

21 *Bolin* announces that he isn’t “too happy” with *Huffstuttler*. Yelling, *Bolin* complains that  
22 *Huffstuttler* brought *Mincy* and *Wilson* (“these guys”) to the cabin and that *Bolin* didn’t know them  
23 “from diddly.” *Bolin* then turns and walks away, telling *Huffstuttler*, “This is a bunch of bull,  
24 Vance.” *Huffstuttler* follows *Bolin* back up the hill toward the cabin. The camera stays on *Mincy*  
25 and *Wilson* while *Huffstuttler* can be heard complaining that his friends will not tell anyone and that  
26 *Bolin* also brought people to the operation. As *Bolin* and *Huffstuttler* walk toward the cabin, *Wilson*  
27 asks *Mincy* whether they should go.

1       The camera then switches to the front of the cabin, where *Huffstuttler* continues his plaintive  
2 monologue to the silent, obviously perturbed *Bolin*. *Huffstuttler* then grabs *Bolin* by the shoulder  
3 and turns him around. The German Shepherd dog, which apparently is tied up barks. *Ramirez*  
4 remains seated next to the front door watching *Bolin* and *Huffstuttler*. When *Huffstuttler* turns *Bolin*  
5 around, *Bolin* warns him: “Don’t fight me Vance. You’re going to lose.” *Bolin* then walks into the  
6 cabin, while *Huffstuttler* continues to holler at him from outside, challenging *Bolin* to fight. With  
7 no response from *Bolin*, *Huffstuttler* then challenges *Bolin*, “Are you going to shoot me?” This  
8 question is followed by a long pause, while *Huffstuttler* nervously looks toward the front door of  
9 the cabin where *Bolin* entered. *Huffstuttler* continues to peer into the cabin, until finally, *Bolin*  
10 emerges holding a pistol in his right hand. With the camera focused on the gun, *Bolin* pulls back the  
11 safety. *Huffstuttler* pleads with *Bolin* not to shoot him and *Bolin* raises the pistol and fires off one  
12 round, without saying a word. *Huffstuttler* falls to the ground.

13       At this point the camera switches back to *Mincy* and *Wilson*, who appear dumbfounded and  
14 very worried as they are looking uphill toward the cabin. At this point in the program a very fast  
15 drum beats creating a feeling of anticipation. *Bolin* returns to *Wilson* and *Mincy* with the pistol in  
16 his hand. *Mincy* asks *Bolin* if he (*Bolin*) is bluffing. *Bolin* shakes his head and says, simply, “No.”  
17 Continuing he tells the friends he has nothing against them. At that moment *Wilson* runs one way  
18 and *Mincy* the other. The camera shows *Bolin* with his arm raised and shooting at *Wilson*, who is not  
19 in view. *Mincy* is running the opposite direction from *Bolin* toward the brush. The camera cuts to  
20 *Wilson* running, being hit by the one round fired, and falling down. The camera immediately  
21 switches back to *Mincy* running through the creek bed past the marijuana plants. He trips and falls  
22 over the large stones and small boulders. His head emerges from behind some small boulders and  
23 addressing *Bolin* he repeatedly pleads, “Please don’t shoot me. Please don’t shoot me.” The camera  
24 pans back to show *Bolin* standing on boulder adjacent to the cowering *Mincy*, pointing the pistol in  
25 *Mincy*’s direction. As *Mincy* continues to plead, *Bolin* stares at him, smirks, raises his pistol, and  
26 fires off one round. *Mincy*’s body goes limp.

27       Switching back to *Wilson*, it is apparent that he has been hit in the shoulder. He winces in  
28 pain and gets up, continuing to run, falter, trip, tumble, and run. The real *Wilson*’s voice speaks over

1 this action, explaining that he felt like an animal, obviously running for his life, certain that Bolin  
2 was pursuing him. While Wilson's voice is speaking, in fact the camera does pan to *Bolin*, from the  
3 waist down, running after *Wilson*.

4 The action then returns to the cabin. At this point, *Bolin* has given up the search, satisfied  
5 that *Wilson* probably will bleed to death. This sentiment, however, is unknown to the fleeing *Wilson*  
6 as he continues to struggle to escape, still stumbling, falling, and running.

7 The next scene shows *Bolin* with a rifle pointed at *Mincy*'s lifeless body. *Bolin* shoots off  
8 three rounds. Quickly changing scenes, and to the background of *Bolin* turning over a table and then  
9 shooting *Huffstuttler*'s lifeless body with the same rifle he used on *Mincy*'s body, the narrator reports  
10 that Kern County deputies said Bolin tried to make the cabin location look like a drug shoot out had  
11 taken place. While this is being shown, *Wilson*'s frantic, struggling escape continues to be depicted  
12 through the rugged terrain of the Kern County mountains. Back at the cabin, *Bolin* drops a buck  
13 knife in the dirt near *Huffstuttler*'s body, drops handfuls of marijuana over *Huffstuttler*'s legs from  
14 a bucket, wipes off the handle of the pistol, wraps *Huffstuttler*'s hand around the handle, drops that  
15 weapon near *Huffstuttler*'s body as well, and then disables *Wilson*'s pickup truck by pulling spark  
16 plug wires from the engine.

17 The next scene shows *Bolin* loading into his van, first the dog, then *Ramirez*. The van then  
18 drives away from the cabin. The real Wilson then states to the interviewer, "It was like it was  
19 business. It didn't matter that he was going to kill somebody, take human lives. It didn't matter." The  
20 camera then cuts back to the *Wilson* character, still running, tripping, and falling through the  
21 brush on the mountain side. It's clear from the reflection of the sun, that it will be dark soon.

22 Back in the *America's Most Wanted* newsroom, which is decorated with a large round plaque  
23 bearing the word's "America's Most Wanted" over the image of an eagle the narrator explains that  
24 police found four pipe bombs in the cabin where Bolin was living, that his van was discovered five  
25 days later, but that Bolin had disappeared. The narrator then displays a green camouflage hat, which  
26 he states belonged to Bolin. He explains the police said Bolin is a "survivalist," but that his (Bolin's)  
27 claims he was a Navy SEAL are false. With a photograph of Bolin displayed, which appears to be  
28 a mug shot, the narrator continues that Bolin killed a man in 1981 with a shotgun blast during an

1 argument, was convicted, and paroled after two years. Another mug shot of Bolin is shown, this one  
2 with a plaque in front of him showing the words "California State Prison," a 'C' number (which  
3 would be Bolin's inmate number), and the name, "Bolin" at the bottom of the plaque. Next, the  
4 narrator reports that in 1986, Bolin stabbed a man 15 times, but he was acquitted, because the jury  
5 found he had acted in self-defense. Now displaying a civilian photograph of Bolin, the narrator  
6 relates that he has been described as a "jack of all trades" who has made a living as a mechanic, but  
7 also may be working as a longshoreman.

8 With the display of another mug shot in the background, the narrator urges the audience to  
9 call the number shown on the screen (1-800-CRIME-90) if Bolin is sighted. The narrator assures  
10 the audience that any callers can remain anonymous.

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1 APPENDIX III

2 Summary of Kern County Channel 29 Television Broadcast Bolin's Case on *America's Most*

3 *Wanted*, Monday, January 8, 1990

4 Segment 2 of Exhibit 54 (which was presented as Exhibit D

5 to Bolin's October 22, 1990, motion to change venue).

6 The story opens with a view of the cabin with Wilson's Toyota pickup parked next to the  
7 cabin, and one uniformed officer talking to three other men in white shirts. The narrator begins,  
8 "What Kern County deputies could not do in four months, a t.v. show did in a few minutes last  
9 night." The narrator continues, over a mug shot photograph of Bolin, that Bolin's case had been  
10 featured on the program the previous evening and "90 minutes later he was arrested by police near  
11 Chicago."

12 Kern County Sheriff Smith is then seen talking to an interviewer about Bolin's capture.  
13 Sheriff Smith states his understanding that Bolin's arrest resulted from a call from a relative. The  
14 narrator explains that the relative notified police in Elmwood Park, Illinois, telling them where "the  
15 suspected killer" could be found. When Bolin was arrested, he also was watching t.v. He was  
16 unarmed and surrendered without a struggle. The camera pans back to Sheriff Smith who states that  
17 while Kern County authorities felt sure Bolin had left the area, some of the local residents in the  
18 Kern County mountains were concerned Bolin was still at large in California, a possibility authorities  
19 did not discount because Bolin is a survivalist. Even if he had left, there was a concern that he could  
20 return.

21 The narrator then summarizes portions of the *America's Most Wanted* program, beginning  
22 with the shooting of Huffstuttler, showing program excerpts to dramatize the remarks. The narrator  
23 recounts that Bolin shot the three victims in order to keep them quiet about his marijuana operation.  
24 Footage of the *America's Most Wanted* program depicting Jim Wilson fleeing – running, stumbling,  
25 falling – is shown. He is described as "badly wounded." Panning to a Bolin mug shot, the narrator  
26 reports Bolin was being held without bail in Illinois and late that afternoon agreed to be returned to  
27 Kern County for trial. The segment ends with a reporter standing in front of the Sheriff's  
28

1 Department and explaining that although the Department has arrest warrants on 40,000 suspects,  
2 "but with Paul Bolin in jail tonight, people here seem to be breathing a lot easier."  
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1 APPENDIX IV

2 Summary of *America's Most Wanted* Program Regarding Bolin's Capture,

3 Sunday, January 14, 1990

4 Segment 3 of Exhibit 54 (which was presented as Exhibit C to Bolin's October 22, 1990, motion to  
5 change venue).

6 This segment plays the introduction to the program previewing the newest "most wanted"  
7 in America as well as numerous very brief snapshots of staged crime, rescue, and capture. The first  
8 story for January 14, 1990, concerns a Vietnamese gang of young men who are portrayed as violent  
9 killers. The second segment of the program concerns a 64-year old Sunday school teacher murdered  
10 by a "drifter" who staked out her home and shot her in the back while she was running from him.

11 The narrator then refers to the Bolin segment, as footage from the program is shown of the  
12 Bolin character emerging from the cabin just before shooting the Huffstuttler character. While the  
13 narrator is still speaking, the real Bolin shown walking through an airport terminal flanked by law  
14 enforcement, in belly chains, with the word "CAPTURED" printed diagonally across the screen.  
15 The scene changes to footage another individual who had been featured on the *America's Most*  
16 *Wanted* program the previous week and who also was been captured thanks to the audience.

17 The program narrator then recounts how all three fugitives from the previously Sunday's  
18 program were captured. Bolin's case was the second case reviewed (in more detail than the prior  
19 reference). The narrator credits an Illinois viewer for Bolin's capture "in near record time."

20 The scene then shifts to footage showing the rugged terrain of the Kern County mountains  
21 featured the previous week just before Wilson, Mincy, and Huffstuttler arrived at the cabin.  
22 Supposedly reporting what the Kern County authorities said, the narrator states that "Bolin was  
23 hiding a secret marijuana crop on a mountain top in California's Sierra Nevadas, and when three men  
24 stumbled on to the plants, Bolin murdered two of them." The scene replays the Bolin character  
25 emerging from the cabin and shooting Huffstuttler. The next scene shows Steve Mincy saying  
26 goodbye to his little girl at the Mincy family campsite. This is followed by the program excerpt of  
27 the Mincy character cowering behind a small boulder pleading for his life and Bolin wordlessly  
28 smirking, shooting him dead.

1       At this point new footage not previously shown in the original program is played. It is of  
2 Donna Mincy, the “victim’s mother,” who explains that “hearing the news [about her son’s death]  
3 wasn’t as bad as having to tell a little ten year old child that her daddy was gone, and he wouldn’t  
4 be back.”

5       Wilson’s frantic escape is replayed next, with the narrator stating that Bolin “meant to kill  
6 Jim Wilson too, according to police, but Wilson survived, shot and severely injured by his ordeal.”  
7 Again, the Wilson character running, stumbling, falling, and struggling is depicted as the real Wilson  
8 narrates over this footage about how he felt like an animal when he was trying to escape. New  
9 footage of Wilson is played also. Speaking to an interviewer, he reports how he essentially fell down  
10 the mountain until he came upon a farm at which he obtained help.

11       Next, a map of Illinois is shown, with the location of Elmwood Park, where Bolin was  
12 arrested. Footage is shown of the actual house Bolin was in when he was arrested, reportedly  
13 watching a football game on television. Mrs. Mincy is then shown with an interviewer explaining  
14 how happy she was when she found out Bolin had been caught. The next scene repeats the footage  
15 of Bolin in leg and belly chains at an airport, accompanied by authorities. The narrator reports that  
16 as of that night, Sunday, January 14, 1990, Bolin is in custody in Kern County, California, where he  
17 faces two counts of murder.

1 APPENDIX V

2 Summary of Voir Dire of Jurors and Potential Jurors Exposed to Pretrial Publicity

3 During voir dire, jurors and potential jurors revealed they were exposed to pretrial publicity about  
4 Bolin's case. Although the juror questionnaire responses each juror and potential juror completed  
5 were before Judge Davis, those responses are not part of the record on habeas corpus and they have  
6 not been offered. The content of the questionnaire responses is gleaned only from references during  
7 the voir dire process.

8 **Part One – Potential Jurors:**

9 1. Ann Chernabaeff stated in her questionnaire that she had seen the *America's*  
10 *Most Wanted* episode featuring Bolin and that the program "showed how it  
11 was done," that "they came to find the farm," "there was some shooting," that  
12 the program "show[ed] the parties involved," and that "[o]ne was getting shot  
13 at and another one [was] running." RT-1: 118.<sup>45</sup> The colloquy between the  
14 Judge Davis and Ms. Chernabaeff indicates she was excused for medical  
15 reasons. *Id.*: 116-19.

16 2. Arthur Cordova, a correctional officer at the California Correctional  
17 Institution in Tehachapi was familiar with the case from both the newspaper  
18 and television. He was not asked if he watched the *America's Most Wanted*  
19 episode about Bolin.<sup>46</sup> From the publicity to which he was exposed, he  
20 recalled the crime occurred in Walker Basin, that two people came up to visit,  
21 and they were shot and killed. Generally news about crimes interested Mr.  
22 Cordova because he liked to "keep up with the statistics of all crimes that  
23 occur[red] here in Kern County." *Id.*: 143, 146, 162. Maintaining those  
24 statistics, however, was not part of his job for the prison. *Id.*: 162-63. Mr.

25  
26 <sup>45</sup> There is no indication from the voir dire how Ms. Chernabaeff had rated Bolin's guilt on  
her juror questionnaire.

27  
28 <sup>46</sup> Because Mr. Cater passed him for cause, however, the Court surmises he had not seen the  
program.

1 Cordova also thought he recognized Bolin's face from either the newspaper  
2 or the television news. *Id.*: 163.<sup>47</sup> He responded to all questions that he  
3 would maintain an open mind about Bolin's guilt, and if the jury returned  
4 guilty verdicts on two murders, an open mind about whether to impose the  
5 death penalty or life without parole. *Id.*: 163-75. Mr. Cater passed him for  
6 cause after individual questioning and Ms. Ryals did likewise. *Id.*: 173, 175.  
7 He was excused on Ms. Ryals' tenth peremptory challenge. RT-7: 1636.

8 3. David Everett Kessler's exposure to pretrial publicity, not including the  
9 *American's Most Wanted* episode, led him to believe he "would have a  
10 difficult time in being very objective" based on what he remembered and  
11 heard together with his feelings about drugs. RT-2: 267-68. What he  
12 remembered was that Bolin "[w]as growing marijuana, had marijuana,  
13 whatever up there and that these three people happened onto the area and that  
14 he shot and killed two of them, and one of them was wounded and escaped  
15 and that was the witness." He believed he obtained this information from the  
16 newspaper and television news broadcasts. *Id.*: 268. Prior to this revelation,  
17 Mr. Kessler expressed his unhappiness with the criminal justice system. He  
18 felt defense attorneys were "underhanded," prosecutors were less competent  
19 than lawyers in private practice, and that trial judges allowed criminals to go  
20 free. *Id.*: 263-64, 266-67. All counsel stipulated to excuse him for cause.<sup>48</sup>  
21 4. Donald Roger Pearson, a fire fighter, explained that he saw the *America's*  
22 *Most Wanted* episode; that "[b]asically, it was a re-enactment of this  
23 supposed crime." *Id.*: 280. His understanding of the circumstances of the  
24 crime was derived from a combination of the *Most Wanted* program,

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25  
26 <sup>47</sup> Voir dire questioning did not elicit how Mr. Cordova had rated Bolin's guilt on his juror  
27 questionnaire.

28 <sup>48</sup> He was not asked about how he had rated Bolin's guilt on his juror questionnaire.

1 newspaper accounts, and television news broadcasts. *Id.*: 280-81. Mr.  
2 Pearson actually had worked in the Walker Basin area and was familiar with  
3 Thompson Canyon on fire patrols. *Id.*: 281. Seeing the *Most Wanted*  
4 episode made Mr. Pearson feel that Bolin was “probably guilty.” The show  
5 was “pretty graphic.” *Id.*: 282. Mr. Pearson recognized that television  
6 programs tend to exaggerate, and he believed he could put what he saw and  
7 read about Bolin’s case out of his mind so that he could decide the case on  
8 evidence presented in the courtroom. *Id.*: 283. On questioning by Mr. Cater,  
9 Mr. Pearson agreed that there was nothing presented in the show which was  
10 *not* focused on convincing the audience that Bolin was guilty of the crimes  
11 alleged. *Id.*: 288. He also agreed there was nothing in the show purporting  
12 to show Bolin’s side of the story. *Id.*: 288-89. Mr. Pearson was aware that  
13 Bolin had been arrested within a few hours of the broadcast of the *Most*  
14 *Wanted* episode. *Id.*: 289. He admitted that since watching the show made  
15 him think Bolin was “probably guilty,” the defense would, in his mind, be  
16 tasked with having to show a reason Bolin was not guilty. *Id.*: 289-90. At  
17 this, the court asked for a cause challenge; when it was interposed it was  
18 granted. *Id.*: 290.

19 5. Jose Reynaldo Reyna, recalled seeing the “national show,” describing it as a  
20 re-enactment in the mountain area that involved a killing, or maybe two.  
21 What he remembered was the “staging” of the show, meaning the geography  
22 of the setting. *Id.*: 295. Mr. Reyna represented he had no opinion about  
23 Bolin’s guilt. *Id.*: 296. Mr. Reyna was excused for cause because he could  
24 never vote for the death penalty. *Id.*: 297.

25 6. After Judge Davis explained to the six prospective jurors about the burden of  
26 proof and presumption of innocence, Velma Elizabeth Schroder, stated that  
27 if she had to decide whether Bolin was guilty or not guilty without having  
28 heard any evidence, she would vote “guilty” based on what she had read and

seen. *Id.*: 338-39. After Judge Davis explained that a verdict could only be predicated on evidence received in court, Ms. Schroder retracted her earlier statement. *Id.*: 339. On individual voir dire, Ms. Schroder confirmed she had not seen the *America's Most Wanted* episode about Bolin, although she did watch the program occasionally. *Id.*: 347. Based on the publicity to which she had been exposed, Ms. Schroder knew the case "had to do with the growing of marijuana" and that two men went in investigating or stumbled upon it. She did not recall any names. *Id.*: 349. In her questionnaire she wrote that based on what she had heard, Bolin was "definitely guilty." *Id.*: 351. The judge then asked her if she was "the kind of person" who could put out of her mind what she had seen on television and read in the newspaper and make a decision based on evidence presented in the courtroom. She responded that she would make herself do that. *Id.*: 352, 353. She was challenged by the prosecutor because although she was in favor of the death penalty, she couldn't vote for it herself. *Id.*: 360.

7. James W. Cook, watched the *America's Most Wanted* episode about Bolin, after having seen a television news program explaining that the show would be broadcast about Bolin's case. *Id.*: 421. About the program he recalled a house in the woods, two people leaving, one of whom was shot and the other who fell down but got away. *Id.*: 422. It wasn't clear to Mr. Cook exactly what happened. *Id.*: 423. On the questionnaire, Mr. Cook marked "no opinion" as to Bolin's guilt and he told the judge the same thing on individual voir dire. *Id.*: 424. He didn't think the show necessarily presented all the facts about the crime, just "their opinion of what happened." *Id.*: 425. After extensively questioning Mr. Cook if, as a juror, he would put the program out of his mind and decide the case only on evidence presented, and receiving affirmations to all of his leading questions, Mr. Soria challenged Mr. Cook for cause and the challenge was denied. *Id.*: 436.

1       8. Kirk William Thompson, saw the *America's Most Wanted* episode about  
2 Bolin. He remembered that an argument started when "these gentlemen" had  
3 come upon an area in Walker Basin and shots were fired. "One guy was shot,  
4 another guy ran off, and Mr. Bolin then ran after this gentleman and then shot  
5 him." *Id.*: 440. One got away and "crawled off to a roadside house or  
6 something." He vaguely recalled seeing the re-enactment of the shooting and  
7 the pointing of the gun at the victims. *Id.*: 441. On the questionnaire, Mr.  
8 Thompson checked he thought that Bolin was "probably guilty." He  
9 answered affirmatively, however, when the judge asked him, "Are you going  
10 to be able to put that out of your mind and listen to this case?" His "probably  
11 guilty" impression was based on the *America's Most Wanted* program. *Id.*:  
12 442. Showing further rehabilitation from his earlier opinion of Bolin's  
13 probable guilt, Mr. Thompson stated that he could label Bolin "as being not  
14 guilty because he is innocent until he is proven guilty." Mr. Thompson  
15 accepted the concept of the presumption of innocence. *Id.*: 443. Mr.  
16 Thompson then revealed he had been called as a character witness in a  
17 murder case for the defense. As for his treatment by the District Attorney's  
18 Office, he was treated in the manner he would have expected to have been  
19 treated. *Id.*: 444. The cross examination he experienced started out "pretty  
20 nice, then it got a little rougher and rougher." He assured the judge he would  
21 not hold that experience against Ms. Ryals. *Id.*: 446. Mr. Thompson stated  
22 on his questionnaire that drug dealers should be hanged. During voir dire, he  
23 explained this was related to the fact he had a 15-year old daughter and was  
24 worried about whether she would become involved in drugs. *Id.*: 447-49. On  
25 the topic of a defendant's privilege *not* to testify, Mr. Thompson was a little  
26 bothered and thought he would have negative thoughts in the back of his  
27 head, despite jury instructions to the contrary. *Id.*: 450. Mr. Soria challenged  
28 him for cause, and the court granted the challenge when Mr. Thompson

1 admitted that he would vote for the death penalty automatically in the event  
2 the jury convicted Bolin of at least one count of first degree murder and one  
3 count of first or second degree murder. *Id.*: 452.

4 9. Raymond Dale Rumsey sometimes watched *America's Most Wanted* and  
5 indicated on the questionnaire he might have seen the segment about Bolin.  
6 *Id.*: 453-54. He hadn't heard about the case from the newspaper or television  
7 and he had no recollection of the circumstances of the crime. He had no  
8 opinion about whether Bolin was guilty. *Id.*: 454. Although when he filled  
9 out the questionnaire, he thought a defendant's failure to testify would mean the  
10 defendant was hiding something, he no longer felt that way after Judge Davis  
11 explained the rules about presumption of innocence and the Fifth  
12 Amendment. *Id.*: 454-55. Mr. Soria challenged Mr. Rumsey for cause when  
13 Judge Davis elicited that he would impose the death penalty automatically for  
14 murder. The challenge was granted. *Id.*: 456.

15 10. Richard Eugene Williford saw the *America's Most Wanted* program about  
16 Bolin. *Id.*: 459. He recalled accurately that the storyteller of the episode was  
17 one of the shooting victims and a friend of one of the deceased victims. He  
18 recalled that Bolin was mad that strangers were brought to the cabin to see  
19 the marijuana plants and he shot the man who brought the others up to the  
20 site "at the cabin door." *Id.*: 460. Mr. Williford recollected the depiction of  
21 the actual shootings. He was aware that the authorities captured Bolin  
22 because of the *Most Wanted* program. Mr. Williford didn't think the actor  
23 who portrayed Bolin looked like Bolin, so he wouldn't "relate the program  
24 totally to him [Bolin]." He couldn't say that the events depicted on the  
25 program were true. *Id.*: 461. Mr. Williford confirmed to Mr. Soria that he  
26 (Mr. Williford) marked on the questionnaire he thought Bolin was "probably  
27 guilty." Mr. Soria further elicited that if Mr. Williford were Bolin, he would  
28 be concerned if someone like Mr. Williford, who had seen the program and

1 thought Bolin was “probably guilty.” *Id.*: 463-64. Nonetheless, Mr.  
2 Williford stated he did not have his “mind made up” about the case. *Id.*: 464.  
3 He answered affirmatively to three leading questions posed by Mr. Soria: 1)  
4 “And you would base your decision strictly on the evidence you hear in this  
5 courtroom?” 2) “And you could promise us that whatever you saw on  
6 America’s Most Wanted would not come into play at all?” and 3) “And you  
7 could make that promise to us?” After securing those assurances, Mr. Soria  
8 challenged Mr. Williford for cause “based on *that*.” (Emphasis added.) The  
9 challenge was denied. *Id.*: 465. The court then visited the issue of the death  
10 penalty and elicited from Mr. Williford he could not vote for it under any  
11 circumstances. Ms. Ryals’ cause challenge was granted. *Id.*: 466.

12 11. Dawn Alicia Albitre, saw a recorded version of the *America’s Most Wanted*  
13 program about Bolin, provided by close friends who lived in Caliente, near  
14 the area of the crime. RT-3: 551-52. She watched the follow-up program as  
15 well where Bolin’s arrest was announced. After watching the Fox programs,  
16 she was able to presume Bolin’s innocence; she would want to hear both  
17 sides before rendering a verdict. *Id.*: 552. Although Ms. Albitre marked on  
18 the questionnaire that she believed Bolin was probably guilty, she “would  
19 want to hear all of the facts” before making a decision as a juror. *Id.*: 552-53.  
20 Mr. Cater elicited from Ms. Albitre that she was at the Labor Day 1989 team  
21 penning Steve Mincy and his family had come to Kern County to see. Before  
22 watching the tape recording of the *Most Wanted* program, Ms. Albitre’s  
23 friend told her about the crime, that is that two men were shot and killed,  
24 another was shot but escaped, and the fact that marijuana involved. *Id.*: 554.  
25 She reported that her husband had heard of Bolin, but she didn’t believe her  
26 husband knew Bolin. *Id.*: 554-55. Ms. Albitre confirmed there was nothing  
27 in the program that supported Bolin’s presumption of innocence and that the  
28 show was designed to make people believe Bolin was guilty. She also

1 confirmed to Mr. Cater that she would be able to “divorce” her recollection  
2 of the video from what would be presented in court, by “completely  
3 block[ing]” out the program. She felt she could do that because she used to  
4 be an E.M.T. *Id.*: 556. Her recollection about the crime and the program  
5 were jogged when she was filling out the questionnaire. *Id.*: 557. If she were  
6 a relative of Bolin’s, she would feel very uneasy about having a juror on his  
7 trial that had her (Ms. Albitre’s) knowledge and background about the case.  
8 *Id.*: 558. Mr. Cater challenged her for cause. *Id.*: 560. Ms. Ryals elicited  
9 from Ms. Albitre that she would be fair. Ms. Ryals also confirmed that Ms.  
10 Albitre thought she might know (Deputy) Marty Williamson, but that this  
11 wouldn’t make any difference in deciding the case. Then, Ms. Ryals passed  
12 her for cause. *Id.*: 561. After Ms. Albitre exited the courtroom, argument on  
13 the defense cause challenge resumed with Mr. Cater pointing out that her  
14 viewing of the *Most Wanted* program about Bolin was more than watching  
15 on the network broadcast; it was a special showing by the friend she stayed  
16 with when she attended the same team penning competition Steve Mincy and  
17 family attended. *Id.*: 562-63. Ms. Ryals countered that there was no  
18 indication Ms. Albitre was lying when she attested that she could be fair. The  
19 court then denied the challenge. *Id.*: 563. Mr. Cater then sought “some  
20 advisement” from Judge Davis, asking “What do we have to do to get  
21 someone who has seen this [*America’s Most Wanted* program] off of this  
22 jury?” Ms. Albitre was excused on the first defense peremptory challenge.

23 RT-7: 1623.

24 12. Michael G. Ansolabehere, Jr. watched the *America’s Most Wanted* episode  
25 about Bolin as promoted by preshow publicity. He agreed the program “was  
26 a pretty graphic representation.” The news account alerted the public to the  
27 anticipated airing of the program mentioned the location as Walker Basin, an  
28 area with which Mr. Ansolabehere was familiar. As far as the program itself,

1 he was most impressed with the depiction of “the young man running down  
2 away from whatever it was he was running away from and being shot at.”  
3 RT-3: 565. On his questionnaire, Mr. Ansolabehere wrote the prosecutors  
4 were “good guys,” and defense attorneys were “bad guys.” *Id.*: 565.  
5 Nonetheless he thought he could set those feelings aside if selected for jury  
6 service in this case. *Id.*: 567.<sup>49</sup> Mr. Ansolabehere worked as the Kern County  
7 Highway Maintenance Engineer for the Department of Public Works, so he  
8 had been a witness in lawsuits many times in the past (when the County was  
9 sued). *Id.*: 569. Mr. Ansolabehere admitted that if the jury were to find Bolin  
10 guilty of two premeditated murders then he “probably would vote for death.”  
11 The court then solicited a cause challenge for the defense, the challenge was  
12 interposed, Ms. Ryals stipulated to it, and the challenge was granted. *Id.*:  
13 569.

14 13. George Atkisson, stated he checked that Bolin was “probably guilty” on the  
15 questionnaire based on the *America’s Most Wanted* program. He responded  
16 affirmatively to the court’s question about whether the show was “pretty  
17 graphic.” He believed he could be a fair juror and put the show out of his  
18 mind. *Id.*: 574. He didn’t believe anything in the program pointed to Bolin’s  
19 innocence. He did not regularly watch the *Most Wanted* program. He also  
20 gained familiarity with Bolin’s case from reading the newspaper. *Id.*: 575.  
21 If he were in Bolin’s place he would be satisfied with him (Mr. Atkisson) as  
22 a juror. *Id.*: 576. When Mr. Atkisson explained his business obligations for  
23 his small software business, counsel stipulated he could be excused for  
24 hardship. *Id.*: 579.

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26  
27 <sup>49</sup> Voir questioning of Mr. Ansolabehere did not elicit how he had rated Bolin’s guilt on his  
28 juror questionnaire.

1 14. Michael Bishop sometimes watched the *America's Most Wanted* program,  
2 but did not see the episode about Bolin. *Id.*: 584. He was familiar with the  
3 case from reading the newspaper and watching television news. *Id.*: 585.  
4 Mr. Bishop was not asked what he recalled about the crime by Judge Davis  
5 or any of the trial attorneys.<sup>50</sup> During Mr. Cater's individual question, Mr.  
6 Bishop revealed he had worked at California Correction Institution,  
7 Tehachapi, repairing kitchen equipment. He didn't think being in prison was  
8 any worse than being in the Army. *Id.*: 588. Mr. Cater challenged Mr.  
9 Bishop because he believed the death penalty should be automatic if the  
10 defendant was found guilty of two murders, whereas life without parole *may* be  
11 appropriate for guilty of a single murder. The challenge was granted. *Id.*: 591.

12 15. Celeste Faye Brown, reported she regularly watched *America's Most Wanted*  
13 and in fact watched the episode about Bolin. She recalled that Bolin was  
14 cultivating marijuana and he didn't want one of the boys to bring his friends  
15 up. *Id.*: 602. She recalled guns being used and chase scenes. After seeing  
16 that program, she thought Bolin was "probably guilty." It was a "he did it"  
17 kind of story. When asked if she would be able to put the re-enactment out  
18 of her mind if chosen as a juror, she responded, "I would try to come here  
19 without preconceived notions, because I don't know the man. I know nothing  
20 about him." She also confirmed she would not compare the re-enactment  
21 with evidence presented at the trial. *Id.*: 603. In addition to the original  
22 show, Ms. Brown also saw the second one, the update. All of her knowledge  
23 about the case came from the *America's Most Wanted* episodes. She neither  
24 watched the news on television, nor read the newspaper. *Id.*: 604. She was  
25 challenged when she said that she would automatically vote for the death

27 <sup>50</sup> Nor did any of the questioners elicit how Mr. Bishop had rated Bolin's guilt on his juror  
28 questionnaire.

penalty if Bolin were convicted of one count of first degree murder and one count of either first or second degree murder. The challenge was granted. *Id.*: 606.

16. Kenneth William Carpenter was a member of the National Rifle Association and in favor of the death penalty. *Id.*: 607. Judge Davis revealed that Mr. Carpenter's mother and his (Judge Davis's) wife were good friends, although Judge Davis did not know Mr. Carpenter or even the names of Mr. Carpenter's siblings. *Id.*: 608. If Bolin were convicted of murder and the special circumstances were found true, Mr. Carpenter would vote in favor of the death penalty “[d]epending on the circumstances.” *Id.*: 609-10. He denied seeing the *America's Most Wanted* segment about Bolin. *Id.*: 610-11. The thought he learned about the case on television and also from talking to co-workers. He felt he was the kind of person who would be able to set aside what he learned about the case prior to trial and listen to testimony given in court. *Id.*: 611. He confirmed that he wrote in his questionnaire he thought criminal defense lawyers were shysters and that prosecutors were civil servants, but admitted he may have been a little facetious when he filled out the questionnaire. *Id.* 613. Based on his understanding of the case, that is, “[a]ccused of shooting three people at defendant's crop,” Mr. Carpenter thought Bolin was “probably guilty.” Nonetheless, if chosen as a juror, he could decide the case from what was presented in the courtroom. *Id.*: 614. Both sides passed Mr. Carpenter for cause. *Id.*: 616, 618. Mr. Carpenter was not subject to further questioning.

17. William Henry Crawford, saw the *America's Most Wanted* program about Bolin. He reported, "The re-enactment was quite vivid in the fact that it represented the two young men and the shooting and the chase. Not all of the details are clear anymore, but some of the more dramatic things are." He was "personally affected by it [the program] because of the trauma involved, the

1 tragedy.” It would be a problem if he were selected as a juror.<sup>51</sup> The defense  
2 cause challenge was stipulated to by the prosecution and granted. *Id.*: 619.

3 18. Dorothy Duncan occasionally watched the *America’s Most Wanted* program,  
4 but did not see the segment about Bolin’s case. *Id.*: 621-22. She did hear  
5 about the crime on television. She remembered only that drugs were  
6 involved and Bolin’s name. *Id.*: 622.<sup>52</sup> Mr. Soria challenged her for cause  
7 after she stated she would vote for the death penalty automatically if Bolin  
8 were convicted of two counts of first-degree murder, and the challenge was  
9 granted. *Id.*: 624.

10 19. Jo Ann Durrett remembered from pretrial publicity on the television news  
11 that the case involved marijuana and someone killed in Tehachapi or in the  
12 mountains. *Id.*: 626. If she were to remember any more about the case, she  
13 would be able to put that information out of her mind and decide the case on  
14 the evidence presented in court. *Id.*: 627.<sup>53</sup> Mr. Soria challenged her for  
15 cause because she stated would vote for the death penalty every time if a  
16 defendant were convicted of first-degree premeditated murder and the  
17 challenge was granted. *Id.*: 631.

18 20. Meri Hatfield would occasionally watch the *America’s Most Wanted* program  
19 and believes she might have seen something about this case on that program.  
20 She also checked on the questionnaire that she hadn’t heard of this case  
21 before. She was unable to describe anything about the crime. She  
22 remembered nothing. *Id.*: 655. If, however, she were to remember

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24 51 Mr. Crawford was not asked about how he had rated Bolin’s guilt on his juror  
25 questionnaire.

26 52 Ms. Duncan also was not asked about how she had rated Bolin’s guilt on her juror  
27 questionnaire.

28 53 Likewise, Ms Durrett was not asked about how she had rated Bolin’s guilt on her juror  
29 questionnaire.

1 something about the crime while sitting as a juror, she would put that  
2 information out of her mind and decide the case based on what she were to  
3 hear in the courtroom. *Id.*: 656.<sup>54</sup> After inquiring about Ms. Hatfield's views  
4 on the death penalty, Mr. Soria and Ms. Ryals passed her for cause without  
5 questioning her. *Id.* 663. She was excused on Ms. Ryals' twelfth peremptory  
6 challenge. RT-7: 1637.

7 21. Carl Kroll, saw the *America's Most Wanted* episode about Bolin. RT-3: 674.  
8 The show made "rather much of an impression" on him. He felt Bolin was  
9 "pretty definitely guilty." If chosen as a juror, he would be able to put that  
10 aside. *Id.*: 675. If Bolin were convicted of two counts of first degree  
11 premeditated murder, Mr. Kroll would impose the death penalty. The  
12 defense cause challenge thereafter was granted. *Id.*: 676.

13 22. Jacqueline Walker occasionally watched the *America's Most Wanted*  
14 program, but after questioning by Judge Davis, it was clear she knew nothing  
15 about Bolin's case. *Id.*: 677-78. Under questioning by Mr. Cater, Ms.  
16 Walker confirmed that although she indicated she had not seen the *America's*  
17 *Most Wanted* episode about Bolin, she marked that Bolin was "definitely  
18 guilty" on her questionnaire response. *Id.*: 681.<sup>55</sup> She explained this was  
19 because she thought Bolin was the *Most Wanted* individual featured on  
20 different episode – one who was "the murderer of babies in that preschool."  
21 *Id.*: 682. Ms. Walker was excused based on her request to "be dismissed"

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26 <sup>54</sup> Whether or not Ms. Hatfield remembered or knew anything about the crime, voir dire  
27 questioning did not elicit how, or if, she had rated Bolin's guilt on her juror questionnaire.

28 <sup>55</sup> It is not clear from the voir dire exchanges whether Ms. Walker maintained Bolin's guilt  
even after learning that he was not the *America's Most Wanted* subject she thought he was.

1 because she wouldn't want to vote for the death penalty even if she thought  
2 it was appropriate.<sup>56</sup> *Id.*: 685.

3 23. William Ward Miller, a school teacher with a desire to bring something to the  
4 court's attention, stated he saw the *America's Most Wanted* program about  
5 Bolin. *Id.*: 698. None of the scenes in the program stood out for him. He did  
6 not pay close attention to the *America's Most Wanted* program. He only  
7 occasionally watched it. He did mark on his questionnaire that Bolin was  
8 "probably guilty" and this was based on what he read about the case in the  
9 newspaper. *Id.*: 699. He couldn't say how many people had been shot. He  
10 connected Bolin's name to newspaper articles when he was completing the  
11 questionnaire. *Id.*: 701. He would be able to vote for either death or life  
12 without parole depending "on the situation." *Id.*: 703. If Bolin were found  
13 guilty of two premeditated murders, Mr. Miller always would vote for the  
14 death penalty. *Id.*: 704. Based on the court's solicitation of a challenge from  
15 the defense, the challenge was interposed and granted. *Id.*: 705.

16 24. Don Newberry wrote in his questionnaire that he had seen the *America's*  
17 *Most Wanted* episode about Bolin. RT-4: 721. He saw only one episode of  
18 the program, – the "re-enactment." He also had read about the case in the  
19 newspaper, but recalled no other television coverage besides the *America's*  
20 *Most Wanted* program. *Id.*: 722. He didn't remember "too much. . . It was  
21 in regard to a case where . . there was marijuana grown on a piece of property  
22 and a case where a couple of people ended up dead." He recalled that the  
23 decedents were shot and had been associated with Bolin. *Id.*: 723. He  
24 recalled there were three victims, one of who got away who was wounded.  
25 He answered affirmatively to the question about whether he would be able to

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27 <sup>56</sup> She also complained to Judge Davis that a man in a "brown coat" was laughing at her as  
28 she was requesting dismissal. Judge Davis excused her directly after she lodged this complaint.

1 put the re-enactment out of his mind and listen to the evidence if he were  
2 selected as a juror. Mr. Newberry marked in the questionnaire that he  
3 thought Bolin was “probably guilty” after seeing the program, but on voir dire  
4 stated he felt he could be impartial. *Id.*: 724. Mr. Soria elicited Mr.  
5 Newberry’s confirmation that he would be open-minded about sentence  
6 selection should the case proceed to the penalty phase. With respect to the  
7 *America’s Most Wanted* program, Mr. Newberry answered affirmative to Mr.  
8 Cater’s question that even though he saw the program about Bolin, the  
9 defense and prosecution were “basically starting off even.” He further  
10 confirmed he would put everything out of his mind he had seen or heard  
11 previously about the case and base his decision on the evidence presented in  
12 the courtroom. *Id.*: 728-29. Mr. Soria then challenged Mr. Newberry for  
13 cause because of the *Most Wanted* program and the court denied the motion.  
14 *Id.*: 729. Ms. Ryals further elicited that if he remembered more about the  
15 program during the trial proceedings, he wouldn’t compare what he  
16 remembered with the presentation because he would follow the court’s  
17 instructions and also because he realized that the *America’s Most Wanted*  
18 program was meant to entertain. *Id.*: 729-30.

19 25. Michael O’Donnell, saw the *America’s Most Wanted* program about Bolin  
20 but indicated on his questionnaire response that he had no opinion as to  
21 Bolin’s guilt based on this program. RT-4: 737-38. He clarified that his wife  
22 was watching the show, and when the Bolin segment came on, she called him  
23 in. What he saw was “the part where the guys went to his house and he  
24 supposedly came unglued and shot them.” *Id.*: 738. His wife called him in  
25 to watch the segment because Kern County was mentioned. *Id.*: 738-39. Mr.  
26 O’Donnell reported that he neither read the newspaper nor watched the news  
27 on television. He could put out of him mind what he saw on the program if  
28 chosen as a juror. *Id.*: 739. He admitted that he smoked marijuana, most

1 recently, “not too long” ago from when the judge asked him the question. He  
2 was familiar with dealers, both good and bad, and didn’t think he would feel  
3 any affinity toward Bolin because Bolin was cultivating marijuana. *Id.*: 740-  
4 41. He didn’t think he could vote for the death penalty. Ms. Ryals interposed  
5 a challenge and the challenge was granted. *Id.*: 742.

6 26. Robert Ogelsby occasionally watched the *America’s Most Wanted* program,  
7 but he didn’t see the episode about Bolin. *Id.*: 743. He did hear about the  
8 case, but his recollection was limited to remembering the area where the  
9 crime occurred because he used to go out to that area for horseback riding and  
10 rounding up cattle. *Id.*: 743-44.<sup>57</sup> After telling the court that he would be  
11 more inclined to vote for life with parole at the penalty phase, but that under  
12 certain circumstances he could still vote for the death penalty, Mr. Soria  
13 passed him for cause. *Id.*: 747. Ms. Ryals challenged him for cause after she  
14 elicited from him that he didn’t know if he could vote for the death penalty  
15 in a case that didn’t involve child murder victims or the death of one his  
16 family members. *Id.*: 750. The court denied her challenge after Mr. Ogelsby  
17 clarified that he could vote for the death penalty. *Id.*: 751. Ms. Ryals  
18 exercised her third peremptory challenge to Mr. Ogelsby as an alternate juror.  
19 RT-7: 1639.

20 27. Nancy La Jean Porter saw the *America’s Most Wanted* program about the  
21 crime and although it was “a pretty graphic dramatization,” she answered that  
22 she would be able to put it out of her mind by “[j]ust pay[ing] attention to the  
23 facts and block[ing] that [the show] out of her mind.” Judge Davis  
24 characterized the program as a “dramatization” broadcast so the network can  
25 sell products. She conceded there was nothing in the dramatization about  
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28 <sup>57</sup> Voir dire questioning did not elicit from Mr. Ogelsby how he had rated Bolin’s guilt on  
his juror questionnaire.

1 Bolin's innocence. RT-4: 761. She wrote down in her questionnaire  
 2 response and confirmed on voir dire that she had no opinion about Bolin's  
 3 guilt. She felt the program was a dramatization and might not be a true  
 4 reflection. *Id.*: 762. The fact that her father spent eight months in the County  
 5 Jail for a drug charge would not influence in the present matter. *Id.*: 763.  
 6 Mr. Soria elicited that Ms. Porter was pregnant. Judge Davis elicited that the  
 7 baby was due during the first week of February. *Id.*: 765. She did not feel  
 8 her pregnancy would prevent her from serving as a juror as long as the  
 9 proceedings did not extend to February.<sup>58</sup> She didn't mind serving while  
 10 pregnant. Mr. Soria challenged Ms. Porter solely on the basis of her having  
 11 seen the *America's Most Wanted* program. The court denied the challenge.  
 12 *Id.*: 766. After Ms. Porter stepped down, Ms. Ryals told Judge Davis that she  
 13 would stipulate to the challenge.<sup>59</sup> *Id.*: 767.

14 28. Nanette Smith did not watch the *America's Most Wanted* program, but she  
 15 had heard of the case from television news about the time the crime occurred.  
 16 *Id.*: 804. She also might have been aware of Bolin's apprehension and return  
 17 to Bakersfield from reading the newspaper.<sup>60</sup> She responded, "Certainly"  
 18 when asked whether she could decide this case based on what would be  
 19 presented in court. She felt she was "fair and impartial." If she were in  
 20 Bolin's place, she would be satisfied to have someone like her on the jury.  
 21 *Id.*: 805. Mr. Cater passed her for cause. Then Ms. Ryals elicited from her  
 22 what she remembered about the news coverage. She remembered "the news

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 24 <sup>58</sup> In fact the penalty proceedings were continued to the first week in February.

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 26 <sup>59</sup> In the Petition, Bolin contends Ms. Ryals' proposed stipulation was based on Ms. Porter's  
 27 exposure to the *America's Most Wanted* program. Petition, ¶ 125. The Warden contends that the  
 28 proposed stipulation was more likely based on Ms. Porter's pregnancy. Answer, ¶ 125.

<sup>60</sup> The questioning did not elicit how Ms. Smith had rated Bolin's guilt on her juror  
 questionnaire.

1 team being up in the area, in Walker Basin when it happened.” She also  
2 recalled that authorities apprehended Bolin “later on.” *Id.*: 808. In the event  
3 she were to remember something about the pretrial publicity, she would not  
4 compare what she remembered with the evidence Ms. Ryals presented at trial.  
5 She could keep that information out of her mind. Ms. Ryals passed Ms.  
6 Smith for cause. *Id.*: 809.

7 29. David Vejarano stated that he was a regular viewer of the *America’s Most*  
8 *Wanted* program and watched it whenever he could. *Id.*: 836-37. He thought  
9 he saw the episode about Bolin four weeks before his voir dire, but he  
10 couldn’t recall any of it. *Id.*: 837. He also thought he might have read about  
11 the case “or seen it on TV.” He remembered that somebody allegedly killed  
12 two men. *Id.*: 838. If he were to remember more about the case from  
13 pretrial publicity as a sitting juror, he would put it out of his mind and decide  
14 the case based on what was presented in the courtroom. *Id.*: 839.<sup>61</sup> Mr. Soria  
15 challenged him for cause, and the challenge was granted when Mr. Vejarano  
16 stated he would always impose the death penalty where the defendant had  
17 been convicted of two counts of premeditated murder. *Id.*: 841.

18 30. Dan Webb, believed he had seen the *America’s Most Wanted* episode about  
19 Bolin six or eight months previous. He recalled that marijuana was being  
20 cultivated and that “two people walked in on this one guy. The guy shot one  
21 of them. One of the guys ran down a hill or something like that, tripped, fell,  
22 or something and then he shot the other guy.” *Id.*: 844. He assumed the  
23 evidence presented on the program was “honest” and that the person exposed  
24 on the show “is probably guilty.” He admitted there was nothing on the show  
25 about Bolin’s innocence. Although he didn’t necessarily believe everything

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28 <sup>61</sup> Mr. Verjarano was not asked about how he had rated Bolin’s guilt on his juror  
questionnaire.

1 he saw on television, the program was still in the back of his mind. Judge  
2 Davis observed that the show included "some very dramatic moments." He  
3 thought that killing two people would qualify as being "pretty graphic." He  
4 remembered that a gun was used. *Id.*: 845. Judge Davis referred to the  
5 program as having "dramatized and sensationalized the case." Mr. Webb felt  
6 like the program story would stay in the back of his mind if he were a juror  
7 on the case. Mr. Soria challenged him for cause and the challenge was  
8 granted. *Id.*: 846-47.

9 31. Kimberly Wilson watched the *America's Most Wanted* program about Bolin,  
10 remembered it fairly well, thought he was definitely guilty based on what she  
11 had seen because of "the way the program was presented." *Id.*: 857. She  
12 stated she would be inclined to impose the death penalty if Bolin were  
13 convicted of two counts of murder, even though the death penalty is not  
14 automatic. *Id.*: 858. Mr. Soria challenged her for cause and the challenge  
15 was granted. *Id.*: 860.

16 32. Douglas Zimmerman stated he watched *America's Most Wanted* on only one  
17 occasion and he believed it was about Bolin. He watched it because it was  
18 publicized beforehand. Judge Davis had to draw out Mr. Zimmerman's  
19 recollection about the program. First, Mr. Zimmerman thought the crime  
20 occurred up at Lake Isabella.<sup>62</sup> *Id.*: 860. He recalled that two people were  
21 killed, that the instrumentality was a gun. While he was watching the  
22 program, he received a telephone call. He did not recall a chase scene. *Id.*:  
23 861. He checked on his questionnaire that he had no opinion about Bolin's  
24 guilt after watching the program. He explained that was because the program  
25 had very little impact on him. *Id.*: 861-62. He also read some information

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28 <sup>62</sup> Lake Isabella also is in the Kern County mountains as are Walker Basin and Thompson  
Canyon.

about the case in the newspaper. He thought he could put all the pretrial publicity information he saw and heard out of his mind if selected as a juror. *Id.*: 862. He could vote for death or life without parole at the penalty phase. *Id.*: 863-84. He answered the same to Mr. Soria's questioning. He also stated he didn't expect Bolin to testify. *Id.*: 865. He clarified, however, and said that he thought it was the obligation of the defense to come forward. Then he said that it wouldn't be a problem if the defense remained mute. *Id.*: 866. Back to the program, Mr. Zimmerman promised to keep everything he saw and heard out of his mind if selected as a juror. *Id.* 867. Mr. Soria challenged him for cause based on his viewing (or partial viewing) of the program and the challenge was denied. *Id.*: 868. He did tell Ms. Ryals that if he remembered something about the program that she didn't present in evidence, he would wonder about that, but he wouldn't let it inform his decision making as a juror. *Id.*: 868-69. Mr. Zimmerman was excused on the defense team's fourth peremptory challenge. RT-7: 1637.

33. During introductory remarks to the six jurors up for individual voir dire in which Daniel Bender was sitting, Judge Davis explained about the presumption of innocence and the prosecutor's burden of proof. He then solicited input from the prospective jurors about whether they understood and agreed with these precepts. Despite the explanation given by Judge Davis, Mr. Bender responded that if he and the other five prospective jurors were asked to reach a verdict right then, his verdict would be "guilty" based on what he had seen and heard on television. RT-5: 944. He did "not necessarily" believe everything on television or in the newspaper, but with respect to the newspaper, his initial response was "pretty much" to believe what he read. *Id.*: 945. Before asking Mr. Bender any questions about his exposure to pretrial publicity, Judge Davis elicited from him that he had a moral conviction that would prevent him from ever voting for the death

penalty. Ms. Ryals challenged him for cause, Mr. Soria submitted the issue to the court. *Id.*: 955. Before sustaining the challenge, Judge Davis elicited from Mr. Bender that he did watch the *America's Most Wanted* episode about Bolin and was independently familiar with the case based on information he read in the newspaper. As a result of that exposure he marked that he thought Bolin was "definitely guilty" in his questionnaire response. Mr. Bender confirmed that he still felt that way, whereupon Mr. Soria challenged him as well. Challenges from both the defense and prosecution were granted. *Id.*: 956.

34. Sandra Burgess revealed that she would lean toward imposing the death penalty if Bolin were convicted of two counts of first degree murder, but would listen to the evidence and be open to both death and life without parole. *Id.*: 978-79. Asked about *America's Most Wanted*, she stated that she did see the episode featuring Bolin. On her questionnaire response she indicated that the program was presented to make Bolin appear guilty. Then she said she saw parts of the program, while her husband was watching it, and heard the soundtrack. She recalled hearing comments from one or two of the parents of the victims. *Id.*: 980. Then she said she left the room when the program first came on because she didn't want to watch it due to the subject matter. She promised to try to put her recollection of what she heard in the program out of her mind if selected as juror. *Id.*: 981. She also read about the case in the newspaper shortly after the crime occurred. *Id.*: 982. She could put that information out of her mind as well. *Id.*: 983. Mr. Soria challenged on the grounds that she heard the *Most Wanted* segment about Bolin and the challenge was denied. *Id.*: 987.<sup>63</sup>

<sup>63</sup> No reference was made to how Ms. Burgess marked her questionnaire as to Bolin's guilt based on exposure to pretrial publicity.

1           35. Glen Hamilton gave his opinion during introductory remarks by Judge Davis  
 2 to him and his five companion prospective jurors before individual voir dire.  
 3 After hearing Judge Davis's explanation about how a defendant need not  
 4 testify and that the jurors must not draw an inference that he is guilty for not  
 5 testifying, Mr. Hamilton stated, "I think if they didn't want to stand up and  
 6 defend themselves, they would like be admitting guilt." *Id.*: 1001. Even  
 7 though he said he could follow the law as instructed by Judge Davis, he  
 8 would still be influenced by this view. *Id.*: 1001-02. On individual voir dire  
 9 Mr. Hamilton stated he read about the case in the newspaper and saw it on  
 10 television.<sup>64</sup> He wouldn't decide the case as a juror based on the pretrial  
 11 publicity. *Id.*: 1051. With respect to whether Bolin were to testify, Mr.  
 12 Hamilton stated that Judge Davis has "swayed" him, in that his thinking was  
 13 a little different than when he first considered the issue. *Id.*: 1052. Ms. Ryals  
 14 challenged Mr. Hamilton because of his reluctance to impose the death  
 15 penalty except in very limited circumstances. *Id.*: 1053-55. Mr. Cater  
 16 objected to the challenge and the challenge was denied. *Id.*: 1055.

17           36. Pete C. Castro explained that his wife saw the *America's Most Wanted*  
 18 program about Bolin. *Id.*: 1024. She then told Mr. Castro about it, that is,  
 19 that "it was bad." *Id.*: 1025. Both Mr. and Mrs. Castro had read about the  
 20 case in the newspaper when the crime was first discovered. At the same time,  
 21 he also heard about the case on television. *Id.*: 1026.<sup>65</sup> He did not believe in  
 22 a penal system where a person is able to live in prison for the rest of his life  
 23 at the expense of the taxpayers. *Id.*: 1028. If Bolin were convicted of two

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 25           <sup>64</sup> Mr. Hamilton was not asked if he watched *America's Most Wanted* generally, or  
 26 specifically the episode about Bolin. He was not asked to describe what he knew about the case from  
 27 his exposure to pretrial publicity. Finally, he was not asked how he had rated Bolin's guilt on his  
 28 juror questionnaire.

29           <sup>65</sup> Voir dire questioning did not elicit from Mr. Castro how he had rated Bolin's guilt on his  
 30 juror questionnaire.

1 counts of first degree murder, Mr. Castro always would vote for the death  
2 penalty. The defense challenge thereafter interposed was granted. *Id.*: 1029.

3 37. Rachael Dominguez had not seen the *America's Most Wanted* episode about  
4 the present case, but had heard about the case in the newspaper and on  
5 television. *Id.*: 1032. She remembered a house in "the boonies" shown by  
6 aerial video where marijuana was being grown. She was not asked any  
7 further questions about her recollection of the crime, just to give an assurance  
8 that if she were to remember more, she would keep those thoughts out of her  
9 mind if selected as a juror. *Id.*: 1033-34.<sup>66</sup> After Judge Davis elicited from  
10 her that she would not be able to bring herself to vote for the death penalty,  
11 Ms. Ryals challenged her for cause and the challenge was granted.

12 38. Hal Hannah saw the *America's Most Wanted* episode about Bolin. He had  
13 a good recollection:

14 [I]t was a man and a partner, I believe, who were cultivating  
15 marijuana and a local wanted to visit this partner. I guess he had  
16 known him since childhood or something like that, wandered up there  
and, I guess the defendant fired on him and another man that was with  
him and shot them

17 He could remember there was shooting and "the defendant firing on two men  
18 who were approaching. One was crawling around in the weeds trying to hide  
19 under rocks and so on." *Id.*: 1058. There was a "semi" chase scene. Mr.  
20 Hannah wasn't sure he could "totally wipe" the dramatization out of his mind  
21 if selected as a juror. *Id.*: 1059. Judge Davis expressed his concern that  
22 because the program was "so graphic," Mr. Hannah might not be able to get  
23 it out of his mind and he "would be comparing what [he] heard in the  
24 courtroom under oath with the dramatization." *Id.*: 1060. Under questioning

25  
26  
27 <sup>66</sup> Nor was Ms. Dominguez questioned about how she had rated Bolin's guilt on her juror  
28 questionnaire.

1 by Mr. Cater, Mr. Hannah stated that Bolin would have to live with the fact  
2 that people in Kern County would be familiar with the crime,

3 unless you go out of town because I can't imagine very many people  
4 here in Kern County that didn't follow that closely because it was  
5 kind of pushed in the news programs prior to it being aired, and more  
6 than once, so people were kind of watching for it just because it dealt  
7 with Bakersfield and Kern County.

8 *Id.*: 1061. If he were Bolin he would have "some misgivings" if a person  
9 with his amount of knowledge about the crime were seated on the jury. With  
10 that statement, Mr. Cater challenged Mr. Hannah for cause. *Id.*: 1062. After  
11 Ms. Ryals attempted to rehabilitate him, Mr. Hannah still stated he couldn't  
12 honestly say he was neutral about Bolin's guilt.<sup>67</sup> The court then granted the  
13 defense challenge. Prior to excusing Mr. Hannah, the judge told him that  
14 only 19 percent of the people surveyed in Kern County actually saw the  
15 *America's Most Wanted* program about Bolin. *Id.*: 1063.<sup>68</sup>

16 39. Lyla Schultz confirmed she probably saw the *America's Most Wanted*  
17 program about Bolin, as well as being aware of other news accounts. *Id.*:  
18 1065. She thought she probably could put out of her mind what she heard  
19 about this case and decide it only based on facts heard in the courtroom.  
20 Because of her religious convictions, she wouldn't be comfortable returning  
21 a verdict for the death penalty. *Id.*: 1067. On further questioning by the  
22 judge, she allowed as how she could vote for either the death penalty or life  
23 without parole if she thought it was appropriate. *Id.*: 1069. In responding to  
24 Mr. Cater, she remembered something about growing marijuana and  
25 something about a chase. When asked again about the program, she thought

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26 <sup>67</sup> Although Mr. Hannah was not asked about how he had rated Bolin's guilt on his juror  
27 questionnaire, the colloquy indicates he believed Bolin was guilty.

28 <sup>68</sup> The 19 percent figure given by Judge Davis was incorrect. The public opinion survey  
29 showed that 23.4 percent of the surveyed people who were aware of Bolin's case saw the *America's*  
*Most Wanted* episode about the crime.

1 that “maybe” she had seen it. *Id.*: 1070. She also checked “probably guilty”  
 2 in the questionnaire about Bolin’s guilt based on the program. On voir dire,  
 3 however, she didn’t feel Bolin was “probably guilty.” *Id.*: 1072. She thought  
 4 it possible that if Bolin didn’t testify she would feel he was hiding something,  
 5 but then said she wasn’t sure. Mr. Cater passed Ms. Schultz for cause. *Id.*:  
 6 1072-73. During Ms. Ryals’ questioning, Ms. Schultz stated that she was  
 7 very much against cultivating marijuana and that she wasn’t sure she could  
 8 be fair to Bolin, whereupon Mr. Cater interposed a challenge and the court  
 9 granted it. *Id.*: 1073-74.

10 40. Linda Elaine Jackson watched *America’s Most Wanted* on a weekly basis and  
 11 saw the episode about Bolin. Judge Davis characterized the program about  
 12 Bolin as “a pretty graphic re-enactment.” She thought her viewing of that  
 13 program might give her a problem. She also knew a witness named Doria  
 14 Huffstuttler. *Id.*: 1133.<sup>69</sup> When she confirmed that she would never vote for  
 15 the death penalty, Ms. Ryals interposed a challenge and it was granted. *Id.*:  
 16 1134.

17 41. Michael Kelly was a regular viewer of *America’s Most Wanted*. *Id.*: 1134-35.  
 18 He saw the Bolin episode. Mr. Kelly first became aware of the crime from  
 19 reading the newspapers. He thought the dramatization of the crime in the  
 20 *America’s Most Wanted* episode about Bolin was “fairly close to the basic  
 21 presentation that was in the newspaper.” His recollection of the crime is:

22 [T]he only general thing I remember was something in the nature of  
 23 a crop that was being cultivated, the fact that there had been a murder  
 24 or murders involved, that the person had fled the area. It seems to me  
 25 vaguely that there was something involved about a pickup truck.

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26  
 27 <sup>69</sup> Although voir dire questioning did not elicit from Ms. Jackson how she had rated Bolin’s  
 28 guilt on her jury questionnaire, her response that her having viewed “the program” might give her  
 a problem suggests she believed Bolin was guilty based on pretrial publicity.

1 He did not recall a chase scene. *Id.*: 1135. When Mr. Kelly marked on the  
2 questionnaire that Bolin was “probably guilty,” that was based on the fact that  
3 the show producers had Bolin’s name, authorities were trying to capture him,  
4 and that this must have meant that they were “pretty sure that this was the  
5 person [Bolin] they were looking for.” *Id.*: 1136. He did not have a problem  
6 with the presumption of innocence. *Id.*: 1137. Mr. Kelly felt that “in most  
7 cases” if he and the other jurors returned guilt verdicts of two counts of first  
8 degree murder, he would impose the death penalty. *Id.*: 1140. After  
9 discussing the fact that he couldn’t picture himself serving as a criminal  
10 defense attorney, representing someone he knew was guilty, Mr. Kelly could  
11 only say that he “probably” would be a fair and impartial juror to both sides.  
12 *Id.*: 1140-41. Mr. Soria challenged him and the challenge was granted. *Id.*:  
13 1141.

14 42. Vicki Lyn Luter had extensive exposure to publicity. During the Judge  
15 Davis’s introductory remarks to her seven-person group before individual  
16 voir dire, he explained the presumption of innocence and the burden of proof.  
17 He then randomly asked Ms. Luter how she would vote, guilty or not guilty,  
18 before any evidence were presented. She responded “Guilty” on two separate  
19 occasions based on what she knew about the case. *Id.*: 1152. She believed  
20 a great deal of what she read in the newspaper. *Id.*: 1153. On individual voir  
21 dire she reported that she often watched *America’s Most Wanted* and  
22 specifically saw the episode about Bolin the “first of the year.” *Id.*: 1158.  
23 She recalled that “the defendant had murdered two people and attempted  
24 another one over a drug deal,” the drug being marijuana. She knew the crime  
25 took place in Walker Basin and she remembered a chase scene. *Id.*: 1159.  
26 She knew that the Bolin character fired a gun. She recalled the pre-show  
27 publicity encouraging viewers to watch the program. She read about the  
28 crime in the newspaper and hearing about it on the television news. *Id.*:

1 1160. She did not think she would be able to keep the program out of her  
2 mind if chosen as a juror. *Id.*: 1161. Mr. Soria challenged her and the  
3 challenge was granted. *Id.*: 1162.

4 43. Leland Rickey McGehee saw the *America's Most Wanted* program featuring  
5 Bolin. *Id.*: 1163. He did not see the follow-up episode about Bolin's arrest.  
6 He marked on the questionnaire "no opinion" about Bolin's guilt. He didn't  
7 consider the *Most Wanted* episode when completing the questionnaire  
8 because he had no idea whether Bolin was guilty or not guilty. He viewed the  
9 program as "all acting." *Id.*: 1164. He would not compare what happened in  
10 the program with the presentation in court by either the prosecution or the  
11 defense. *Id.*: 1165-66. He was in favor of the death penalty and could vote  
12 for it if warranted, but it would be difficult. He also would vote for life  
13 without parole if that sentence were warranted. *Id.*: 1168-71. Mr. Soria  
14 questioned Mr. McGehee on Bolin's right not to testify and whether Mr.  
15 McGehee would draw any inferences about that; Mr. Soria then challenged  
16 him only on the basis of his exposure to the *America's Most Wanted* program.  
17 *Id.*: 1171-72. The challenge was denied. Ms. Ryals questioned him about his  
18 hesitancy to impose the death penalty and then passed him for cause. *Id.*:  
19 1172-74.

20 44. Lyle Talmadge Mills saw the *America's Most Wanted* episode about Bolin.  
21 He described it as a re-enactment of the incident," including victims  
22 approaching the crime scene and the perpetrator "taking action to shoot the  
23 individuals," then "the person departing the premises." On the  
24 questionnaire, he marked that Bolin was "definitely guilty" and still believed  
25 that on voir dire [g]iven the evidence that was presented in that scenario."  
26 *Id.*: 1176. Mr. Mills also heard news broadcasts on the radio and articles in  
27 the newspaper. The television program just reinforced his view. He felt he  
28 would be influenced by the publicity and that it would "take something rather

dramatic to change that position.” The defense cause challenge was granted.

*Id.:* 1177.

45. Georgia Irene Morgan stated on individual voir dire that she saw the majority of the *America's Most Wanted* episode about Bolin. She missed the beginning. She watched the program because of the pre-show publicity advertising it. Ordinarily she did not watch that program. *Id.*: 1178. She did not believe that she would compare the dramatization with what she would hear in the courtroom. She was employed as a Municipal Court clerk and reported that she "clerked the preliminary hearing on it." She could not differentiate what she heard at the preliminary examination hearing from the television program. *Id.*: 1179. Having clerked the preliminary examination hearing and understanding that it was "just a probable cause hearing," she did not think her experience would influence her judgment in as a trial juror. She remembered more about the television program than the preliminary hearing. She didn't remember reading anything in the paper about the case. If she did "it was probably just the little standard paragraph that was in there." *Id.*: 1180.<sup>70</sup> Mr. Soria's challenge on the basis of the exposure to the television program was denied. *Id.*: 1185. Questioning by Ms. Ryals brought out that Ms. Morgan did not have a very high opinion of attorneys. Ms. Morgan explained that as a Municipal Court clerk, she dealt with a lot of new, inexperienced attorneys; that view would not affect her view of the presentation of this case. Her main complaint was that attorneys would come into court ill-prepared. *Id.*: 1186. Ms. Ryals also passed Ms. Morgan for cause. *Id.*: 1188.

<sup>70</sup> Voir dire questioning did not elicit from Ms. Morgan how she had rated Bolin's guilt on her juror questionnaire. Her response to Judge Davis's questions, however, indicate she would not have harbored pre-conceived notions of his guilt based on her exposure to pretrial publicity.

1           46. Jody Pedrin saw trailers for the *America's Most Wanted* episode about Bolin  
2           before it aired, but she did not watch the program. *Id.*: 1190. She recalled  
3           that marijuana was involved. She stated her exposure to the pre-broadcast  
4           “hype,” as Judge Davis described it, would have no influence on her if  
5           selected as a juror. *Id.*: 1191.<sup>71</sup> Mr. Soria passed her for cause without  
6           questioning her. *Id.*: 1196. The defense team exercised its first peremptory  
7           challenge to Ms. Pedrin as an alternate juror. RT-7: 1629.

8           47. Shirley A. Sabo regularly watched the *America's Most Wanted* program  
9           almost every week. She didn't have a good memory for the Bolin episode.  
10           It didn't stand out for her. RT-6: 1225. At the time the show was aired, in  
11           January, Ms. Sabo was preoccupied with personal business matters. Judge  
12           Davis referred to the show about Bolin as a “rather graphic, I would think you  
13           could call it, dramatization.” *Id.*: 1227. She did read about the crime in the  
14           newspaper. *Id.*: 1228. From the television news, she remembered there was  
15           a raid in the mountains, someone got away, but then the authorities caught  
16           him. She believed the deaths that she remembered occurred during a  
17           shootout. *Id.*: 1229.<sup>72</sup> Mr. Cater interposed a challenge on the grounds she  
18           may have seen the *America's Most Wanted* episode about Bolin and the  
19           challenge was denied. *Id.*: 1235. Ms. Sabo was the prosecutor's thirteenth  
20           peremptory challenge. RT-7: 1632

21           48. Errol Stoddard watched the *America's Most Wanted* episode about Bolin.  
22           When he was completing the questionnaire, that particular episode came back  
23           to his mind. He customarily watched the program every week. He recalled  
24           two men coming up a road to a small cabin in an area with heavy underbrush

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26           <sup>71</sup> Ms. Pedrin was not asked about how she had rated Bolin's guilt on the juror questionnaire.

27  
28           <sup>72</sup> Ms. Sabo also was not asked about how she had rated Bolin's guilt on the juror  
questionnaire.

1 and woods. There were shots fired and one of the individuals fell down and  
2 the other ran off back down the road. He did not recall a chase. He believed  
3 that only one person “fell down.” RT-6: 1297. He was aware of newspaper  
4 and television news accounts of the crime when it originally happened in  
5 1989. Based on what he knew of the crime, he marked on his questionnaire  
6 that Bolin was “definitely guilty.” He confirmed this belief to Judge Davis  
7 during individual questioning. *Id.*: 1298. He was most influenced by the  
8 local television news coverage. Although he heard Judge Davis tell him that  
9 Bolin is presumed innocent under the law, Mr. Stoddard still felt he was  
10 definitely guilty. Mr. Cater’s cause challenge was granted. *Id.*: 1299.

11 49. Carolyn Pomerene saw television news broadcasts when Bolin was arrested.  
12 She also read about the crime in the newspaper. *Id.*: 1305. She recalled that  
13 “somebody was shot and another guy was shot.” Her memory was vague. As  
14 to Bolin’s arrest, she recalled that he was arrested out of state. *Id.* : 1306. If  
15 her memory were clarified during the trial, she would be able to put  
16 information gleaned from pretrial publicity out of her mind. *Id.*: 1307. Mr.  
17 Cater passed Ms. Pomerene for cause without asking any questions. *Id.*:  
18 1313.<sup>73</sup>

19 50. Cindy L. Kiser remembered seeing the trailers and advertisements for the  
20 Bolin episode of the *America’s Most Wanted* program, but she did not recall  
21 actually seeing it. She remembered there being publicity about the crime  
22 because it involved someone from Kern County. She recalled “bits and  
23 pieces” about the case. *Id.*: 1323. On the questionnaire she wrote that she  
24 believed Bolin was “probably guilty.” *Id.*: 1324. This was based on the  
25 following thinking: “if he was doing drugs or selling drugs or cultivating or

26  
27  
28 <sup>73</sup> The voir dire questioning of Ms. Pomerene did not elicit how she rated Bolin’s guilt on her  
juror questionnaire.

1 whatever, he was breaking the law, he knew it, he was guilty.” *Id.*: 1324-25.  
2 This impression was based entirely on the questionnaire. It applied to the  
3 marijuana charge. The court explained that Bolin also was charged with two  
4 counts of murder, *id.*: 1325, but she didn’t give her opinions about those  
5 charges. She did tell Mr. Cater that even though the law cannot compel Bolin  
6 to testify, she would think he had something to hide if he did not testify. Mr.  
7 Cater interposed a cause challenge. *Id.*: 1329. The court inquired further and  
8 she clarified that although she wrote on the questionnaire she would think  
9 Bolin had something to hide if he did not testify, she no longer held that  
10 belief after the law was explained to her. *Id.*: 1330. The court then denied  
11 the challenge. *Id.*: 1331.

12 51. Lois Thurman<sup>74</sup> never watched *America’s Most Wanted*. *Id.*: 1339. She read  
13 about the case in the newspaper when it first happened. *Id.*: 1339-40. She  
14 also saw a television news story about the crime on Channel 17.<sup>75</sup> *Id.*: 1340.  
15 Mr. Cater did not ask Ms. Thurman any questions about pretrial publicity and  
16 passed her for cause. *Id.*: 1343-45.

17 52. Isabel Caudillo saw the *America’s Most Wanted* episode concerning Bolin  
18 and agreed with Judge Davis that “it was pretty graphic.” *Id.*: 1368. Based  
19 on that show, she wrote on the questionnaire she thought Bolin was guilty,  
20 “the way they dramatize everything on TV.” She remembered the show as  
21 follows:

22 Well, it started up where, well, suppose, I guess he was talking to  
23 some guy or something and then they drove off to like some country  
24 or whatever out there in Kern County and he was talking to one of the  
25 guys and got mad because one of his friends or something brought  
another of the guys in there and he didn’t want them, and I just saw

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26 <sup>74</sup> The Clerk’s Transcript spells this last name “Thurman” and the Reporter’s Transcript spells  
27 it “Therman” and “Thurman.” The “Thurman” version will be utilized in this memorandum order.

28 <sup>75</sup> She was not asked to state what she remembered about the crime. Nor did any questioner  
elicit how she had rated Bolin’s guilt on her juror questionnaire.

one, like he came out and started shooting at one and that other guy heard it and came around and started chasing him, something like that.

She remembered some people being shot and somebody running. She didn't think this would affect her as a juror because she would have to hear both sides. *Id.*: 1369. She was challenged by Ms. Ryals because she would never vote for the death penalty. Mr. Cater also challenged on the grounds of the *America's Most Wanted* program. Ms. Ryals' challenge was granted and Mr. Cater's challenge was denied. *Id.*: 1372.

53. William Goff began individual voir by talking about his opposition to the death penalty, which he expressed on the questionnaire. *Id.*: 1427. Nonetheless if he were a juror he felt he would follow the jury instructions. *Id.*: 1428. He felt that he would not invariably vote for life without parole or invariably for the death penalty. He would vote for the death penalty if he felt it was appropriate. *Id.*: 1430. Under Mr. Soria's questioning, Mr. Goff stated he saw the Bolin episode of *America's Most Wanted*. Based on what he knew of the case, he marked twice on the questionnaire that Bolin was "probably guilty." After receiving the preliminary instructions the court gave in advance of individual voir dire, however, he changed his mind; he did not still feel the way the questionnaire response indicated. He thought he saw the *America's Most Wanted* program about Bolin a month and a half prior to the date of his voir dire. He reported his understanding:

What I recall in the story was something along the lines of there was some marijuana being cultivated in the desert area and someone was out in the field or out in the desert area, I think doing some target shooting or something like that, and someone came along and was a friend to him and brought him back, and the person at the house was upset because this person brought somebody back and that is when the shooting started.

*Id.*: 1431. Mr. Goff clarified that the desert area was the “foothill type.” *Id.*: 1431-32. He recalled four people in the story. The people who came to the area came on an off-road vehicle. He recalled that two people came to visit

1 and the others were already there. Mr. Goff only recalled guns being used  
2 and that one of the visitors took off and was pursued. Mr. Soria commented,  
3 “Sounds like you might have or might not have seen it, it’s not clear. Some  
4 of the details you say may be right and some may be wrong.” *Id.*: 1432.  
5 While Mr. Goff couldn’t verify that he wouldn’t have images from the show  
6 in his mind, he believed that as a juror he would be able to decide the case  
7 based on the evidence presented in the courtroom. He did not believe he  
8 could “block” out entirely the information he recalled from his mind if  
9 selected as a juror. *Id.*: 1433. He confirmed that he could follow the  
10 instructions not to consider any information in determining a verdict that was  
11 not presented in court. *Id.*: 1434. Mr. Soria challenged Mr. Goff based on  
12 the television program and the court denied the challenge. *Id.*: 1435. On  
13 further questioning by the judge, Mr. Goff clarified that he had no idea when  
14 he saw the show about Bolin. It was not necessarily a month and a half ago.  
15 He remembered it because the setting was Kern County. *Id.*: 1436. Ms.  
16 Ryals questioned him extensively about his opposition to the death penalty  
17 and eventually passed him for cause because he said he could vote for it. *Id.*:  
18 1436-40. Mr. Goff was the eighth potential juror to be seated for service.  
19 Ms. Ryals excused him on her third peremptory challenge. RT-7: 1633.

20 54. During general questioning of the group in which Ginger Lewis, Mary  
21 Clifford, and Angelica Gonzalez were assembled, Judge Davis explained to  
22 the prospective jurors about reasonable doubt, the prosecutor’s burden, and  
23 the fact that the defendant does not have to testify. Ms. Clifford then  
24 commented: “Yes, but I think after I read that questionnaire that I filled out  
25 yesterday, I don’t think I could say, not guilty. I mean I don’t think I could  
26 say not guilty.” RT-7: 1482. Explaining further, she said: “I assume from  
27 that [the questionnaire] that this gentleman was on a program on television.  
28 I didn’t see it. . . . I assume that if he was among the most wanted, that he had

disappeared or run away or done something.” *Id.*: 1483. Judge Davis then explained to her that television is mainly a medium to entertain people and not always believable. *Id.* Ms. Clifford did not speak again until individual voir dire; she was challenged for cause after confirming she would have difficulty setting aside her belief that if Bolin did not testify he had something to hide. *Id.*: 1510.

55. During individual voir dire, Angelica Gonzalez revealed that she sometimes watched the *America's Most Wanted* program, but did not see the episode about Bolin. She marked "maybe" she had seen it on the questionnaire, but confirmed during voir dire that she had not. From other television viewing, however, she was aware that Bolin's case had been featured on the program. RT-7: 1488. Although she didn't see the program, she marked that she believed Bolin was "definitely guilty." *Id.*: 1489. Her explanation was vague; she said she felt Bolin was probably guilty by "the way the questionnaire was set up" and the assumption that he would not testify. *Id.* Judge Davis then pondered: "You gained – gee, we are going to have to redo the questionnaire – you gained the impression he was guilty by reading the questionnaire?" She affirmed this notion coupled with the fact that Bolin would not testify. *Id.* Mr. Cater challenged her for cause when she confirmed that she believed the death penalty was appropriate for marijuana cultivators and the challenge was granted. *Id.*: 1497

56. During individual voir dire, Ginger Lewis reported that the *America's Most Wanted* show was a favorite of her's and her husband's. She remembered:

That it was a deal that was supposed to have happened in Walker Basin and they had on it where two young men come up there and ran across a marijuana field, and one man was killed, the other was not. Then the man, well, the boy had got to some place. The boy that was shot had crawled someplace and got help. And by the time they got there, the guy was gone and his belongings were gone, and then they showed a picture on TV.

1                   *Id.*: 1499. She stated that having seen the show would not influence her at all  
2 because the viewed TV as “a joke.” *Id.*: 1500. Mr. Cater challenged Ms.  
3 Lewis on the grounds that she saw the *America’s Most Wanted* segment about  
4 Bolin and the challenged was denied. *Id.*: 1507. Ms. Lewis was Ms. Ryals’  
5 fifth peremptory challenge. *Id.*: 1635.<sup>76</sup>

6                   57. Lorri Craig was not sure whether she saw the *America’s Most Wanted*  
7 program about Bolin. She explained that she saw several programs on the  
8 local news and was not sure if she saw the actual program or local news  
9 previews of the program. *Id.*: 1603. From the local news she learned there  
10 had been a shooting and that one of the victims had gotten away; there has  
11 been three victims. She personally knew the area because she had been up  
12 there. She responded, “I don’t know,” to the question, “Do you think what  
13 you have heard about this case will cause you to find it difficult to serve as  
14 a juror?” She knew a lot about the case because people she knew lived up  
15 there. After hearing this statement, Ms. Ryals challenged her for cause; Mr.  
16 Cater submitted; the court granted the challenge. *Id.*: 1604.<sup>77</sup>

17                   58. Todd Wilson had learned about this case from the newspaper and television  
18 quite a while prior to this voir dire. *Id.*: 1612-13. Without asking him any  
19 questions about what he might recall about the crime, Judge Davis elicited an  
20 assurance from Mr. Wilson that he would be able to put out of his mind what  
21 he previously learned about the case. *Id.*: 1613.<sup>78</sup> Mr. Cater challenged him  
22 after he stated that he would impose the death penalty “every time” if a

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24                   <sup>76</sup> Voir dire questioning did not elicit from Ms. Lewis how she had rated Bolin’s guilt on her  
25 juror questionnaire.

26                   <sup>77</sup> The matter of how Ms. Craig had rated Bolin’s guilt on her juror questionnaire did not  
27 come up during voir dire.

28                   <sup>78</sup> In addition to not asking him to describe his recollection of the facts of the crime, Mr.  
29 Wilson was not asked about how he had rated Bolin’s guilt on his juror questionnaire.

1 defendant had been convicted of two counts of premeditated murder. *Id.*:  
2 1614-15. The challenge was granted. *Id.*: 1615.

3 59. During individual voir dire of Barbara Unruh, Judge Davis remarked that she  
4 “certainly” had heard about the case on television and the newspaper.<sup>79</sup> *Id.*:  
5 1617. She stated that she would be able to base any decision as a juror on  
6 what was presented in court and not what she learned from the media. *Id.*:  
7 1617-18. After Ms. Unruh explained that it would be difficult for her to  
8 impose the death penalty, but she believed she could do it, Mr. Cater asked  
9 no questions. *Id.*: 1620.

10 **Part Two – Actual Jurors:**

11 1. Gilbert Barnes read about this case in the newspaper (which he generally read  
12 thoroughly) and watched television news about it. He both read the  
13 newspaper thoroughly and daily watched two segments of the evening news  
14 on Channel 6. RT-1: 91. He did not watch the *America’s Most Wanted*  
15 program and did not see the program about Bolin. *Id.*: 92. He marked that  
16 Bolin was “definitely guilty” in his questionnaire response, because of the  
17 “write up in the paper” and because he (Bolin) pulled the trigger of a gun as  
18 an eyewitness so stated. *Id.*: 92-93. After further questioning by Judge  
19 Davis, Mr. Barnes, upon reflection, stated that he would honor the  
20 presumption of innocence and base whatever decision he would make about  
21 the case on evidence presented in court. *Id.*: 93-98. Mr. Soria passed him for  
22 cause after further questioning. *Id.*: 100-03. Ms. Ryals did as well. *Id.*: 104-  
23 05.

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<sup>79</sup> The Court deduces that this statement was predicated on Judge Davis’s reading of Ms.  
27 Unruh’s questionnaire response. No other inquiries about her feelings of Bolin’s guilt, as may or  
28 may not have been reflected in the questionnaire response, or her recollection of the crime were  
made.

1                   2. Jeannine Marie Lee recalled that the crime in this case occurred in Walker  
2 Basin and she thought she had seen the *America's Most Wanted* segment  
3 about Bolin. RT-2: 238-39. She thought three people were involved and that  
4 someone was wearing red.<sup>80</sup> Two victims were killed and one lived. She  
5 offered that she didn't read anything about the case and really didn't know  
6 whether someone told her about it or she saw it on television. *Id.*: 239. She  
7 did not recognize Bolin. *Id.*: 239-40. She stated that she "absolutely" could  
8 put aside what she knew about the case prior to that day if she were selected  
9 as a juror. *Id.*: 240.<sup>81</sup> Under Mr. Soria's questioning, she again confirmed  
10 that she thought she might have seen the *America's Most Wanted* episode  
11 about Bolin. *Id.*: 243. She remembered someone wearing a red, long-sleeved  
12 button-up shirt. Mr. Soria cautioned her that this particular program presents  
13 "one version of what may have happened out there, with no cross  
14 examination by the defense." She understood that. *Id.*: 244. She also  
15 understood that as a juror, she would have to base her decision on evidence  
16 presented in court. *Id.*: 244-45. Mr. Soria challenged Ms. Lee because she  
17 might have seen the program and the challenge was denied. *Id.*: 245.

18                   3. Michael Vaughn believed he saw the *America's Most Wanted* program about  
19 Bolin. He recalled that the setting was Kern County and that is why he had  
20 any interest in the program at all. He didn't normally watch it. *Id.*: 362. He  
21 recalled that just hours after the broadcast of the program, in Indiana or Idaho

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25                   <sup>80</sup> In fact the Steve Mincy character was wearing a long-sleeved red plaid button up shirt. The  
26 Vance Huffstuttler character was wearing a red or reddish orange tee-shirt under an unbuttoned  
27 chambray work-type shirt.

28                   <sup>81</sup> Voir dire questioning did not elicit from Ms. Lee how she had had rated Bolin's guilt on  
her juror questionnaire or whether her statement to Judge Davis that she could put aside her pretrial  
knowledge indicated she had not prejudged Bolin's guilt.

1 or somewhere Bolin was arrested.<sup>82</sup> He believed he actually saw the  
2 broadcast where Bolin's arrest was described. He did see the crime  
3 recreated.<sup>83</sup> He also subscribed to the newspaper and read it nearly every day.  
4 *Id.*: 364. He did not see any television news broadcasts about this case.  
5 When he filled out the questionnaire he marked "no opinion," and then  
6 changed that to "probably guilty." This answer was based on the fact that  
7 authorities arrested Bolin and that Bolin's case was featured on the *America's*  
8 *Most Wanted* program. *Id.*: 364-65. Mr. Vaughn did not believe, however,  
9 that everyone arrested was always guilty. He also understood that the fact of  
10 Bolin's arrest was not evidence of his guilt. *Id.*: 365. If he were Bolin, he  
11 supposed he would be satisfied with having a juror with his (Mr. Vaughn's)  
12 frame of mind. *Id.*: 366. With respect to penalty, Mr. Vaughn didn't lean one  
13 way or the other. *Id.*: 370. Mr. Cater elicited that Mr. Vaughn wrote on the  
14 questionnaire Bolin "got upset with a friend who brought another friend to  
15 the pot farm and shot them." He believed he obtained that information from  
16 the newspaper close in time to the actual crime. *Id.*: 373. He didn't  
17 remember a chase scene or someone (i.e., Bolin) standing on a boulder  
18 shooting another person (i.e., Steve Mincy). *Id.*: 374. He confirmed that he  
19 marked twice on the questionnaire that he thought Bolin was "probably  
20 guilty." As a juror he would be able to divorce himself from that impression.  
21 *Id.*: 375. He realized that the *America's Most Wanted* program depicts a  
22 version of events the producers want to convey. He referred to it as  
23 sensationalism. *Id.*: 376. Mr. Vaughn denied that if Ms. Ryals were to put  
24 on a case he felt justified the charges, that the defense would have "to prove

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25  
26 <sup>82</sup> Bolin was arrested in a suburb of Chicago, Illinois.  
27

28 <sup>83</sup> Highlights of the first program were, in fact, replayed during the second broadcast, in  
addition to clips of Steve Mincy's mother and the Kern County Sheriff.

something" to put him out of that frame of mind. The following colloquy ensued:

Q. Why not?

A. Like I say, I don't know if he is guilty or not.

Q. Why did you say he is “probably guilty,” then?

A. Basically from what I said before. The next person that's on that T.V. show, he is probably guilty, too, but it is not necessarily so.

*Id.*: 378. At this point, Mr. Cater challenged Mr. Vaughn for cause and the challenge was denied. *Id.*: 378-79. On her individual voir dire of Mr. Vaughn, Ms. Ryals stressed that her case would not necessarily follow the factual development depicted in the *America's Most Wanted* program. Mr. Vaughn stated he understood that. He also offered that he didn't pay that much attention to the program. *Id.*: 380. Mr. Vaughn revealed that in the past when he used marijuana, he actually suffered an arrest. Authorities were going to charge him for a felony, but the charged ended up being a misdemeanor. He was satisfied with the fairness of his treatment. *Id.*: 381-82. Ms. Ryals passed him for cause. *Id.*: 382. Judge Davis elicited further information about the prior arrest. It took place in 1971 or 1972 in Tulare County. *Id.*: 383. After Mr. Vaughn was excused for the day, Mr. Cater made a record for his cause challenge. First, he believed Mr. Vaughn lied during voir dire. He said he didn't see the dramatization, but his questionnaire response read "like a script, a capsulization of the script of that show. *Id.*: 384. Mr. Cater specifically was referring to Mr. Vaughn's statement that Bolin got upset when a friend brought another friend to see the pot farm. *Id.*: 384-85. Second, Mr. Vaughn wrote in his jury questionnaire twice that he thought Bolin was "probably guilty." Third, he neglected to disclose on the questionnaire that he had been arrested for the marijuana

1           questions.” Judge Davis stated his view that he believed Mr. Vaughn had  
2           not seen the *America's Most Wanted* program, but rather his knowledge about  
3           the case from the *Bakersfield Californian*. Judge Davis then stated that he  
4           hadn’t read those articles. RT-2: 385-86. Ms. Ryals argued in support of the  
5           judge’s view that Mr. Vaughn obtained his information about the crime from  
6           the newspaper rather than from the main *America's Most Wanted* episode  
7           about Bolin:

8           every bit of the information [Mr. Vaughn] gave us was liberally in the  
9           press on one or more occasions, this “got upset” with “bring[ing] a  
10           friend to a pot farm” was pushed [by the newspaper] throughout the  
11           whole thing. Anything that was that television show was accurate, as  
12           far as I saw it, with what was in the [Bakersfield] *Californian* and  
13           with what is in the police reports with the exception of his  
14           background [about being a Navy SEAL]. I mean generally. I am not  
15           talking about the colors that people had on and that type of thing, but  
16           what was in the news and what was on that television show were  
17           basically the same things.

14           *Id.*: 386. With respect to the marijuana issue, Ms. Ryals stated that despite  
15           the fact he neglected to mention his arrest on his questionnaire, he had no  
16           qualms about talking about it in court. In fact, had he lied, no one ever would  
17           have known. *Id.*

18           4. Dale Eyraud Campbell believed when she completed the questionnaire that  
19           she had not seen the *America's Most Wanted* program about Bolin, but  
20           overnight, she remembered she had seen it because of “the name and  
21           something clicked.” She did not, however, remember any details, except for  
22           the area. RT-5: 1005. She reiterated she didn’t remember any of the details,  
23           only with respect to the “name” and the “area” she remembered “seeing  
24           something about that.” *Id.*: 1005-06. She knew a little about the case  
25           through the newspaper or people talking, or television. Since her baby was  
26           born the year before, she didn’t have much time to pay attention to the news.

*Id.*: 1006.<sup>84</sup> Even if she did remember something about the pretrial publicity as a sitting juror, she would not consider that information in rendering a verdict. She had been a crime victim. During a burglary of her house, the perpetrators tried to take her with them, but failed. She was not hurt. *Id.*: 1007. She struggled, and that's why the perpetrators left empty handed. Her parents were home at the time, and her father was yelling at her mother to "get the gun." She didn't think that experience would influence her judgment in this case. *Id.*: 1008. Mr. Cater elicited that she watched the *America's Most Wanted* program occasionally. *Id.*: 1011. She confirmed that if she should recall details of the show that she would divorce them from her mind if selected to serve on the jury. Mr. Cater challenged her for cause and the challenge was denied. *Id.*: 1012.

5. Julie Hanson saw the *America's Most Wanted* segment about Bolin. She could not remember "that many details" about the program. She stated:

I just recall that someone came to this man's house. I don't know many details. I don't know how he even came to the house. I know he came to the house and was looking for help for somebody else I think that was injured or something, and I really don't know any details. It is just one of those things. . . . I know this happened around, up in the desert, somewhere up in the mountains. I know that.

*Id.*: 1092-93. When asked whether she remembered any scenes involving shootings or knifings, she replied, "I only remember something about the man who went to the house getting in a car to go get the other guy or something. No, I really can't – I don't know that much detail." She believed she had seen news stories about this case on the local television news. She also believed she had read about it in the newspaper. She could remember no details from either source. *Id.*: 1093. If her recollection of pretrial publicity were refreshed by evidence presented during the trial, she could put that out

<sup>84</sup> She was not asked how she had rated Bolin's guilt on her juror questionnaire.

1 of her mind and decide the case based on what she heard in the courtroom.  
2 *Id.*: 1094. She could keep an open mind about penalty. *Id.*: 1096. During  
3 Mr. Soria's individual voir dire, she confirmed the location of the crime in  
4 the desert or mountains, that a man came to a house, that the man was young,  
5 and that there was a shooting. She did not recall how many people were in  
6 the house, if more than one man came to the house, or how many people were  
7 shot. *Id.*: 1097-98. She answered affirmatively to the question, "Okay, so  
8 there is very little you remember about the story?" *Id.*: 1098. Based on  
9 watching the *America's Most Wanted* program, she marked on her  
10 questionnaire, twice, that she thought Bolin was "probably guilty." But that  
11 "feeling" would not stay with her. It's the way the crime was "recreated on  
12 TV" that made her feel he was guilty. There was nothing in the program that  
13 led her to believe that Bolin was innocent. *Id.*: 1099. She promised she  
14 could put those feelings aside if selected as a juror and decide the case on the  
15 evidence presented in court. *Id.*: 1099-1100. After securing these assurances,  
16 Mr. Soria challenged Ms. Hanson for cause and the challenge was denied.  
17 *Id.*: 1100.

18 6. Patricia Hinson believed she saw the *America's Most Wanted* program  
19 featuring Bolin. *Id.*: 1111. "What I remember about it was that they had  
20 given their dramatization of what supposedly happened in Walker Basin."  
21 She noted there had been a homicide plus another shooting and the incident  
22 involved marijuana. She was not familiar with Walker Basin. She didn't  
23 recall the type of weapon used or whether there were multiple houses  
24 involved. *Id.*: 1112.<sup>85</sup> She confirmed that she would not expect "Mrs. Ryals  
25 to come here with a script of that television program and entertain" her. She  
26 also stated she would not compare what she remembered from the program

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27  
28 <sup>85</sup> She was not asked how she had rated Bolin's guilt on her juror questionnaire.

1 with what she hearing in court. *Id.*: 1113. She confirmed that she would not  
2 retain the information in her mind or have “bias against” defense counsel  
3 because she “saw this Hollywood dramatization.” *Id.*: 1113-14. She didn’t  
4 even recognize Bolin’s name until she read the synopsis at the end of the  
5 questionnaire. If she were to remember something about the program or a  
6 news story during the trial, she would be able to put it out of her mind and  
7 decide the case on what was presented in the courtroom. Mr. Soria elicited  
8 that from the newspaper she gleaned this case involved a shooting “under  
9 suspicious circumstances.” She didn’t get that from the *America’s Most*  
10 *Wanted* program – because she was preparing, serving, eating, and cleaning  
11 up dinner when the program came on. The television was in the living room  
12 and she was working in the kitchen. Mr. Soria challenged her because of her  
13 exposure to the program and the challenge was denied. *Id.*: 1120.

14 7. Robert Bowles, had been a prosecution witness in a case in which Ms. Ryals  
15 was the prosecutor. They talked before he testified. RT-6: 1393. There was  
16 nothing about his pre-testimony interview with Ms. Ryals that would cause  
17 him to favor her in the present case. He could vote “not guilty” in this case.  
18 *Id.*: 1394. Mr. Bowles had a nephew who had a drug problem in high school.  
19 Mr. Bowles would not convict Bolin of marijuana cultivation if he didn’t feel  
20 Ms. Ryals hadn’t proved it. *Id.*: 1395. When asked if he could keep an open  
21 mind about Bolin’s guilt, despite his dislike of drugs, he responded: “I have  
22 numerous friends who have had different lifestyes and my father taught me  
23 to treat each individual as an individual and not to put some label on them.”  
24 *Id.*: 1396. He did see the *America’s Most Wanted* dramatization about this  
25 case. His children were watching the show. He didn’t pay much attention to  
26 it. *Id.* Mr. Bowles didn’t see enough of the show to make comparisons  
27 between what was presented during the show and what Mr. Ryals might  
28 present in court. He also understood Mr. Soria’s concern that the show “was

1 so darn graphic that it just burned into your mind that you can't get it out of  
2 your mind," but he confirmed that he would not hold that opinion. *Id.*: 1397.  
3 In his questionnaire response he indicated he had "no opinion" one way or the  
4 other about Bolin's guilt. He didn't agree with the program because he felt  
5 everyone charged with a crime should have a trial and not be convicted on  
6 television, which is generally what that show did. *Id.* Mr. Bowles also read  
7 about the case in the local newspaper and saw news programs about it. *Id.*:  
8 1397-98. Specifically, on the news, he saw Bolin being escorted off the  
9 airplane. *Id.*: 1398. He believed he could fair and impartial. *Id.* On the  
10 questionnaire, he responded that he felt the death penalty would be  
11 "appropriate in cases where there is no doubt the guy meant to take someone  
12 else's life with no regard to the other person's rights," but he had no quarrel  
13 with the fact that under the law the death penalty was not automatic under  
14 those circumstances. *Id.*: 1400-10. Under questioning by Mr. Soria, Mr.  
15 Bowles confirmed that if Bolin were found guilty on all counts, he would still  
16 be open to imposing LWOP rather than the death penalty. He would also  
17 give Ms. Ryals the same consideration. Mr. Soria challenged Mr. Bowles  
18 because of his exposure to the *America's Most Wanted* show and the  
19 challenge was denied. *Id.*: 1402. Ms. Ryals elicited that Mr. Bowles did not  
20 see enough of the program to form an opinion about Bolin's guilt. *Id.*: 1402-  
21 03. Further, the fact that Bolin's case was featured on the program would not  
22 affect Mr. Bowles' consideration of the evidence in the case. He would not  
23 view Ms. Ryals' job as having to go a step or two beyond what she'd  
24 normally have to prove. *Id.*: 1403.

## APPENDIX VI

## Bolin Juror Publicity Chart

## Part I – Potential Jurors

potential juror	source of publicity	Bolin's guilt on questionnaire	level of recollection	put publicity out of mind	cause challenge	other excusal
1. Ann Chernabaeff	AM	not asked	limited			medical hardship
2. Arthur Cordova	newspaper & tv news	not asked	good	yes	none 10th DA peremptory	
3. David Kessler	newspaper & tv news	not asked	good	not objective	stip to excuse	
4. Donald Pearson	AM plus newspaper & tv news	probably	graphic	open minded except Bolin bore burden	defense b/c of def burden – granted	
5. Jose Reyna	AM	no opinion	good	not asked	DA b/c no DP – granted	
6. Velma Schroeder	other (watched AM sometimes)	definitely	good	yes	DA b/c no DP – granted	
7. James Cook	AM & trailers plus tv news	no opinion	limited	yes	def b/c of AM – denied	
8. Kirk Williams	AM	probably	good	yes	def b/c deft might not testify – granted	
9. Raymond Rumsey	none for this case, but occ. watched AM	no opinion	none	n/a	def b/c of automatic DP – granted	
10. Richard Williford	AM	probably	good	yes	def b/c of AM – denied DA b/c no DP – granted	

1 potential juror	2 source of publicity	3 Bolin's guilt on questionnaire	4 level of recollection	5 put publicity out of mind	6 cause challenge	7 other excusal
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11. Dawn Albitre	AM – recorded & replayed; talking to friends	probably	excellent – was in town crime occurred	yes	def b/c of publicity – denied 1st def peremptory	
12. Michael Ansolabehere	AM & trailers	not asked	excellent	yes	def b/c of automatic DP – granted	
13. George Atkisson	AM & newspaper	probably	not asked, but revealed on voir dire as good	yes		business hardship
14. Michael Bishop	newspaper & tv; did not see AM, but occ watched	not asked	not asked	not asked	def b/c of automatic DP – granted	
15. Celeste Brown	AM (regular viewer)	probably	good	yes	def b/c of automatic DP – granted	
16. Kenneth Carpenter	tv & coworkers	probably	good	yes	none	
17. William Crawford	AM	not asked	excellent	no	def b/c of lack of impartiality – granted	
18. Dorothy Duncan	tv; did not see AM, but occ watched	not asked	limited	not asked	def b/c of automatic DP – granted	
19. Jo Ann Durrett	tv news	not asked	limited	yes	def b/c of automatic DP – granted	
20. Meri Hatfield	AM possibly; occ watched show	not asked	none	yes	none; 12th DA peremptory	
21. Carol Kroll	AM	definitely	excellent	yes	def b/c of automatic DP – granted	

1 potential juror	2 source of publicity	3 Bolin's guilt on questionnaire	4 level of recollection	5 put publicity out of mind	6 cause challenge	7 other excusal
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22. Jacqueline Walker	occ watched AM	definitely (but confused with another <i>Most Wanted</i> feature)	none	not asked	none – court excused her; would not vote for DP	
23. William Miller	AM; newspaper	probably	limited	not asked	def b/c of automatic DP – granted	
24. Don Newberry	follow-up AM plus newspaper	probably	good	yes	def b/c of AM – denied	
25. Michael O'Donnell	AM	no opinion	good	yes	DA b/c no DP – granted	
26. Robert Ogelsby	other; occ watched AM, but not this time	not asked	good	not asked	DA b/c favored LWOP – denied 3rd DA alt peremptory	
27. Nancy Porter	AM	no opinion	excellent	yes	def b/c of AM – denied DA stip to excusal (juror was 7 mos pregnant)	
28. Nanette Smith	tv news & newspaper, but not AM	not asked	good	yes	none	
29. David Verjarano	tv news & newspaper; AM regular, but not this time	not asked	limited	yes	def b/c of automatic DP – granted	
30. Dan Webb	AM	probably	good	no	def b/c of lack of impartiality – granted	

1 potential juror	2 source of publicity	3 Bolin's guilt on questionnaire	4 level of recollection	5 put publicity out of mind	6 cause challenge	7 other excusal
31. Kimberly Wilson	AM	definitely (b/c of how the program was presented)	good	not asked	def b/c of automatic DP – granted	
32. Douglas Zimmerman	AM plus newspaper	no opinion	good	yes	def b/c of AM – denied 4th def peremptory	
33. Daniel Bender	AM plus newspaper	definitely	good	no	def b/c of lack of impartiality – granted; DA b/c of no DP – granted	
34. Sandra Burgess	follow-up AM plus newspaper	yes	good	yes	def b/c of AM – denied	
35. Glen Hamilton	newspaper & tv news	not asked	not asked	yes	DA b/c of reticence to impose DP – denied	
36. Pete Castro	wife's rendition of AM plus tv news & newspaper	not asked	good	not asked	def b/c of automatic DP – granted	
37. Rachael Dominguez	newspaper & tv news but not AM	not asked	good	yes	DA b/c of no DP – granted	
38. Hal Hannah	AM	not asked	excellent	no	def b/c of lack of impartiality – granted	
39. Lyla Schultz	AM (probably) plus other news accounts	probably	good	probably	def b/c of lack of impartiality – granted	

1 potential juror	2 source of publicity	3 Bolin's guilt on questionnaire	4 level of recollection	5 put publicity out of mind	6 cause challenge	7 other excusal
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40. Linda Jackson	5 AM (regular viewer)	not asked	not asked	no	DA b/c of no DP – granted	
41. Michael Kelly	6 AM (regular viewer) plus newspaper	probably	good	probably	def b/c of lack of impartiality – granted	
42. Vicki Luter	7 AM plus trailers, newspaper & tv news	8 not asked but stated guilty on voir dire	9 good	10 no	11 def b/c of lack of impartiality – granted	
43. Leland McGehee	10 AM, not follow-up	11 no opinion	12 not asked, but revealed on voir dire as good	13 yes	14 def b/c of AM – denied	
44. Lyle Mills	13 AM plus radio news and newspaper	14 definitely & still believed that on voir dire	15 not asked, but revealed on voir dire as good	16 no	17 def b/c of lack of impartiality – granted	
45. Georgia Morgan	18 AM (except for beg) plus trailers & newspaper	19 not asked (was the court clerk at the prelim)	20 limited to good	21 yes	22 def b/c of AM – denied	
46. Jody Pedrin	23 AM trailers, but not AM	24 not asked	25 limited	26 yes	27 none (& no def questions)	
47. Shirley Sabo	28 AM (regular viewer) plus newspaper & tv news	29 not asked	30 good	31 not asked	32 def b/c of AM – denied 13th DA peremptory	
48. Errol Stoddard	33 AM (regular viewer) plus tv news & newspaper	34 definitely & maintained that belief on voir dire	35 very good	36 not asked	37 def b/c of lack of impartiality – granted	
49. Carolyn Pomerene	38 tv news & newspaper	39 not asked	40 good	41 yes	42 none (& no def questions)	

1 potential juror	2 source of publicity	3 Bolin's guilt on questionnaire	4 level of recollection	5 put publicity out of mind	6 cause challenge	7 other excusal
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50. Cindy Kiser	AM trailers & ads	probably	good	not asked	def b/c deft might not testify, but after ct rehabilitated her – denied	
51. Lois Thurman	newspaper & tv news – <i>never</i> watched AM	not asked	not asked	not asked	none (& no def questions)	
52. Isabella Caudillo	AM	guilty	excellent	not asked	def b/c of AM – denied; DA b/c not DP – granted	
53. William Goff	AM	probably (but changed his mind during voir dire)	good (not completely accurate)	yes	def b/c of AM – denied	
54. Mary Clifford	questionnaire – did not see AM; not asked about other pretrial publicity	not asked – but stated during intro to voir dire Bolin must be guilty b/c of the questionnaire	none	n/a	def b/c deft might not testify – granted	
55. Angelica Gonzalez	AM trailers, but not AM, plus Mary Clifford's remarks during into to voir dire; a sometime watcher of AM	definitely (by the way the questionnaire was "set up")	not asked	not asked; but indicated lack of impartiality	def b/c of belief the DP was appropriate for marijuana growers – granted	
56. Ginger Lewis	AM (regular AM viewer) Mary Clifford's remarks during into to voir dire	not asked	excellent	not asked	def b/c of AM – denied 5th DA peremptory	

1 potential juror	2 source of publicity	3 Bolin's guilt on questionnaire	4 level of recollection	5 put publicity out of mind	6 cause challenge	7 other excusal
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57. Lorri Craig	AM trailers, tv news	not asked	excellent	not asked	DA b/c of lack of impartiality – granted	
58. Todd Wilson	newspaper & tv news	not asked	not asked	yes	def b/c of automatic DP – granted	
59. Barbara Unruh	newspaper & tv news	not asked	not asked	yes	none (& no def questions)	

## Part II Actual Jurors

12 actual juror	13 source of publicity	14 Bolin's guilt on questionnaire	15 level of recollection	16 put publicity out of mind	17 cause challenge	18 other excusal
1. Gilbert Barnes	newspaper & tv news, not AM	definitely (b/c of write up in the paper)	not asked, but revealed on voir dire as good	yes	none	
2. Jeannine Lee	AM – possibly	not asked	very good	yes	def b/c of AM – denied	
3. Michael Vaughn	follow-up AM plus newspaper	probably (based the fact Bolin was featured on AM); but he waffled about whether he currently thought Bolin was guilty	excellent	yes	def b/c of lack of impartiality & AM – denied	
4. Dale Campbell	AM (1st she thought not, then thought so) plus newspaper and tv news; occ watched	not asked	limited (knew the area)	yes	def b/c of AM – denied	

1 actual juror	2 source of publicity	3 Bolin's guilt on questionnaire	level of recollection	put publicity out of mind	cause challenge	other excusal
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4	AM					
5	5. Julie Hanson	AM	probably	limited to good (incorrect in parts)	yes	def b/c of AM – denied
6	6. Patricia Hinson	AM	not asked	limited to good	yes	def b/c of AM – denied
7	7. Robert Bowles	AM plus tv news & newspaper	no opinion	graphic	yes	def b/c of AM – denied